State Affairs Committee

Friday, April 4, 2014
9:30 AM
Morris Hall (17 HOB)

Meeting Packet

Will Weatherford
Speaker

Jim Boyd
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Friday, April 04, 2014 09:30 am

End Date and Time: Friday, April 04, 2014 01:30 pm

Location: Morris Hall (17 HOB)

Duration: 4.00 hrs

Consideration of the following bill(s):

HB 117 Public Retirement Plans by Ray
CS/HB 503 Municipal Governing Body Meetings by Local & Federal Affairs Committee, Pigman
CS/HB 791 Coastal Management by Agriculture & Natural Resources Subcommittee, Renuart
CS/HB 929 Little Gasparilla Island, Charlotte County by Local & Federal Affairs Committee, Roberson, K.
CS/HB 949 East Naples Fire Control Rescue District, Collier County by Local & Federal Affairs Committee, Hudson
CS/HB 955 Fish and Wildlife Conservation Commission by Agriculture & Natural Resources Subcommittee, Goodson
CS/HB 1051 Public Records & Public Meetings/Public-Private Partnerships by Government Operations Subcommittee, Roberson, K.
CS/HB 1055 Onsite Sewage Treatment and Disposal Systems by Agriculture & Natural Resources Subcommittee, Mayfield
CS/CS/HB 1123 Aquatic Preserves by Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Porter
CS/HB 1363 Vessel Safety by Agriculture & Natural Resources Subcommittee, Van Zant
HB 1399 Hillsborough County Aviation Authority, Hillsborough County by Raulerson
HB 1441 Key Largo Wastewater Treatment District, Monroe County by Raschein
HB 7093 Rehabilitation of Petroleum Contamination Sites by Agriculture & Natural Resources Subcommittee, Rooney
HB 7115 OGSR/Active Investigations of Testing Impropriety/DOE by Government Operations Subcommittee, Cummings
HB 7119 OGSR/K-12 Education Records by Government Operations Subcommittee, Combee
HB 7121 OGSR/Postsecondary Education Records by Government Operations Subcommittee, Ahern
HB 7143 OGSR/Social Security Numbers by Government Operations Subcommittee, Caldwell

Consideration of the following proposed committee bill(s):

PCB SAC 14-02 -- Florida Retirement System
PCB SAC 14-03 -- Ratification of Rules/Department of Environmental Protection

NOTICE FINALIZED on 04/02/2014 16:17 by Love.John

HB 117

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Public Retirement Plans
SPONSOR(S): Ray and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Harrington	Williamson
2) Finance & Tax Subcommittee	18 Y, 0 N	Pewitt	Langston
3) State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

Under current law the Marvin B. Clayton Police Officers Pension Trust Fund Act (act) provides a uniform retirement system for the benefit of municipal police officers. All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds. The act provides an incentive – access to premium tax revenues – to encourage the establishment of police officer retirement plans by cities. The act only applies to municipalities organized and established by law, and it does not apply to unincorporated areas of any county or counties.

The bill expands the applicability of the act. It provides that the act applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities. The bill requires the consolidated government to notify the Department of Management Services, Division of Retirement, when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It provides that the municipality may enact an ordinance to levy a premium tax as authorized in law, and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference estimates that the bill will have a negative, insignificant fiscal impact on state government revenues and a positive, insignificant fiscal impact on local government revenues. *See* Fiscal Comments for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Police Officers' Retirement Trust Fund
Local police officer pension plans are governed by chapter 185, F.S., which is known as the Marvin B. Clayton Police Officers Pension Trust Fund Act (act). The act declares it a legitimate state purpose to provide a uniform retirement system for the benefit of municipal police officers.[1] Chapter 185, F.S., was originally enacted in 1953 to provide an incentive – access to premium tax revenues – to encourage the establishment of police officer pension plans by cities.

All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds.[2] The act sets forth the minimum benefits or minimum standards for pensions for municipal police officers. The benefits provided in the act may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:[3]

- Net proceeds from an excise tax levied by a city upon property insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.[4] The excise tax is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division).[5] In 2012, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $62.6 million. Under current law, a municipality may not receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide police services.[6]

To qualify for insurance premium tax dollars, plans must meet requirements found in chapter 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. If the division deems that a police officer pension plan created pursuant to chapter 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.

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[1] Section 185.01(1), F.S.
[2] *See* s. 185.01(1), F.S.
[3] Section 185.07(1), F.S.
[4] Section 185.08, F.S.
[5] A copy of the 2012 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 3, 2014).
[6] Chapter 175, F.S., authorizes a municipality to receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide fire protection services. Section 175.041(3)(c), F.S.

Consolidation

Consolidation involves combining city and county governments so that the boundaries of the county and affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent government units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial.

Section 3, Art. VIII, of the State Constitution, provides:

> Consolidation. – The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service from which the indebtedness was incurred.

The voters of the City of Jacksonville and Duval County adopted a municipal charter pursuant to this constitutional provision in 1967. Section 9, of Article VIII, of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. This is the only consolidated government in the state.

Effect of the Bill

The bill provides that chapter 185, F.S., applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution. The bill requires the consolidated government to notify the division when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It authorizes the municipality to enact an ordinance levying the tax as provided in s. 185.08, F.S., and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

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

B. SECTION DIRECTORY:

Sections 1. and 2. amend ss. 185.03 and 185.08, F.S., specifying applicability of chapter 185, F.S., to certain consolidated governments.

Section 3. 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.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a consolidated government is entitled to premium tax distributions provided by chapter 185, F.S. As a result, this bill may have a fiscal impact on state revenues because state premium taxes paid by a casualty insurer to fund a municipal police officers' retirement plan are credited against the premium taxes paid to the state by the insurance company.[7] The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant negative impact on state general revenues.

The bill may result in a positive fiscal impact on local governments because the bill provides that a consolidated government may collect premium tax revenues collected by the municipality receiving police protection services if the consolidated government provides a municipal police officer retirement plan, as provided for in chapter 185, F.S. The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant positive cash and recurring impact on local revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[7] Section 624.509(4), F.S.

1 A bill to be entitled
2 An act relating to public retirement plans; amending
3 ss. 185.03 and 185.08, F.S.; specifying applicability
4 of ch. 185, F.S., to certain consolidated governments;
5 providing that a consolidated government that has
6 entered into an interlocal agreement to provide police
7 protection services to a municipality within its
8 boundaries is eligible to receive the premium taxes
9 reported for the municipality under certain
10 circumstances; authorizing the municipality receiving
11 the police protection services to enact an ordinance
12 levying the tax as provided by law; including certain
13 consolidated governments under provisions authorizing
14 imposition of a state excise tax on casualty insurance
15 premiums covering certain property; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
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20 Section 1. Subsection (2) of section 185.03, Florida
21 Statutes, is amended to read:
22 185.03 Municipal police officers' retirement trust funds;
23 creation; applicability of provisions; participation by public
24 safety officers.—For any municipality, chapter plan, local law
25 municipality, or local law plan under this chapter:
26 (2)(a) ~~The provisions of~~ This chapter applies ~~shall apply~~
27 only to municipalities organized and established pursuant to the
28 laws of the state~~,~~ and does ~~said provisions shall~~ not apply to

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

29 the unincorporated areas of a ~~any~~ county or ~~counties nor shall~~
30 ~~the provisions hereof apply~~ to a ~~any~~ governmental entity whose
31 police officers are eligible to participate in the Florida
32 Retirement System.
33 (b) With respect to the distribution of premium taxes, a
34 single consolidated government consisting of a former county and
35 one or more municipalities, consolidated pursuant to s. 3 or s.
36 6(e), Art. VIII of the State Constitution, is also eligible to
37 participate under this chapter. The consolidated government
38 shall notify the division when it has entered into an interlocal
39 agreement to provide police services to a municipality within
40 its boundaries. The municipality may enact an ordinance levying
41 the tax as provided in s. 185.08. Upon being provided copies of
42 the interlocal agreement and the municipal ordinance levying the
43 tax, the division may distribute any premium taxes reported for
44 the municipality to the consolidated government as long as the
45 interlocal agreement is in effect.
46 Section 2. Subsection (1) of section 185.08, Florida
47 Statutes, is amended to read:
48 185.08 State excise tax on casualty insurance premiums
49 authorized; procedure.—For any municipality, chapter plan, local
50 law municipality, or local law plan under this chapter:
51 (1)(a) Each incorporated municipality in this state
52 described and classified in s. 185.03, as well as each other
53 city or town of this state which on July 31, 1953, had a
54 lawfully established municipal police officers' retirement trust
55 fund or city fund, by whatever name known, providing pension or
56 relief benefits to police officers as provided under this

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

57 chapter, may assess and impose on every insurance company,
58 corporation, or other insurer now engaged in or carrying on, or
59 who shall hereafter engage in or carry on, the business of
60 casualty insurance as shown by records of the Office of
61 Insurance Regulation of the Financial Services Commission, an
62 excise tax in addition to any lawful license or excise tax now
63 levied by each of the ~~said~~ municipalities, respectively,
64 amounting to .85 percent of the gross amount of receipts of
65 premiums from policyholders on all premiums collected on
66 casualty insurance policies covering property within the
67 corporate limits of such municipalities, respectively.
68 (b) This section applies to a municipality consisting of a
69 single consolidated government consisting of a former county and
70 one or more municipalities, consolidated pursuant to s. 3 or s.
71 6(e), Art. VIII of the State Constitution, and to casualty
72 insurance policies covering property within the boundaries of
73 the consolidated government, regardless of whether the
74 properties are located within one or more separately
75 incorporated areas within the consolidated government, and
76 provided the properties are being provided with police
77 protection services by the consolidated government.
78 Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Municipal Governing Body Meetings
SPONSOR(S): Local & Federal Affairs Committee; Pigman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Flegiel	Rojas
2) Government Operations Subcommittee	9 Y, 0 N	Stramski	Williamson
3) State Affairs Committee		Stramski	Camechis

SUMMARY ANALYSIS

The Florida Constitution and Statutes require that the exercise of extra-territorial powers by a municipality be authorized by general or special law. These provisions have been interpreted to prohibit a municipality's governing body from holding meetings outside its boundaries absent enactment of a law authorizing such meetings.

This bill authorizes a municipal governing body to hold joint meetings with the governing body of the municipality's home county or the governing body of other municipalities to discuss and act on matters of mutual concern at a place and time prescribed by ordinance or resolution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Open Meetings:
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public. Any act taken by a public body shall not be considered binding unless it is taken at a meeting open to the public.[1]

Florida courts have held that "open to the public" means the public must be given a reasonable opportunity to attend the public meeting.[2] This requires that government meetings be held within a reasonable distance of the jurisdiction subject to the authority of the public body.

County Government Meeting Authority:
The Florida Constitution provides non-charter counties the power of self-government as is provided by general or special law.[3] Charter counties have all powers of local self-government not inconsistent with general law or special law.[4] Counties may hold special and regular meetings at "any appropriate public place in the county," after giving proper public notice.[5] A legislative and governing body of a county may set the time and place of its official meetings.[6] These provisions give charter and non-charter counties the authority to hold joint meetings with cities at any place within the county.

Municipal Government Meeting Authority:
The Florida Constitution provides municipalities with the governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and authorizes the exercise of any municipal power for municipal purposes except as otherwise provided by law.[7] This provision allows municipalities to hold joint meeting with county governments. However, unlike the laws regulating county meetings, the laws regulating municipal meetings are not explicit as to where municipalities may meet.

The Florida Constitution requires that the exercise of extra-territorial powers by a municipality shall be as provided by general or special law.[8] Municipal bodies are authorized to adopt legislation concerning any subject matter upon which the Legislature may act, except for: "[t]he subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution."[9]

The Florida Attorney General has recognized the Legislature's role in authorizing extraterritorial powers for municipalities. In a 2003 opinion concerning the authority of a municipality to meet roughly four miles outside its boundaries, the Attorney General wrote that city councils may not hold meetings

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[1] Section 286.011(1), F.S.
[2] *Rhea v. School Bd. Of Alachua County,* 636 So.2d 1383 (Fla. 1st DCA 1994).
[3] Art. VIII, Sec. 1(f), Florida Constitution.
[4] Art. VIII, Sec. 1(g), Florida Constitution.
[5] Section 125.001, F.S.
[6] Section 125.01(1)(a), F.S.
[7] Art. VIII, Sec. 2(b), Florida Constitution.
[8] Art. VIII, Section 2(c), Florida Constitution.
[9] Section 166.021(3)(a), F.S.

outside municipal limits without authorization from general or special law, and that all acts and proceedings at meetings without statutory authorization are void.[10]

In 2008, the Legislature enacted ch. 2008-286, L.O.F., authorizing the City of Belleair Beach's governing board to hold meetings outside the municipality's boundaries at such time and place as prescribed by ordinance, resolution or interlocal agreement. Language in the bill provided that the city council was encouraged to hold its meetings in close proximity to the people it serves.

In 2011, the Legislature enacted ch. 2011-147, L.O.F., creating s. 166.0213, F.S., which authorized municipalities with populations of 500 or less to hold meetings up to five miles outside their municipal boundaries.

Joint meetings between the governing bodies of cities and counties are common practice across the state. These meetings generally take place in the concerned city. However, legislative staff has found several instances of joint meetings held beyond municipal boundaries, including in the counties of Highlands, Charlotte and Indian River.[11] Joint meetings between municipalities are also common practice[12] and by their nature cannot take place in both concerned municipalities at the same time.

In 2010, a civil complaint was filed against the Town of Lake Placid Commission for holding joint meetings with the Highlands County Commission in the county seat of Sebring, located approximately 20 miles away from Lake Placid.[13] The complaint alleged that the Town did not have the authority to meet beyond its municipal boundaries.[14] The Circuit Court ruled in favor of the Town of Lake Placid on Summary Judgment. The case is presently on appeal to the Second District Court of Appeals.[15]

Effect of Proposed Changes

The bill explicitly authorizes municipality governing bodies to hold joint meetings with county governing bodies within which the municipality is located or with the governing body of another municipality. The bill requires municipalities to set the time and location of joint meetings by ordinance or resolution.

B. SECTION DIRECTORY:

Section 1: Creates s. 166.0213(2), F.S., authorizing a municipality to hold joint meetings with county governing bodies within which the municipality is located or with the governing body of another municipality at such a time and place as shall be prescribed by ordinance or resolution.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[10] Attorney General's Opinion 2003-03 (2003).

[11] List of Meeting Notices for Joint meetings held beyond municipal boundaries on file with LFAC staff.

[12] *Id.*

[13] Wiggins v. Town of Lake Placid. FL. 10th Circuit Court (2010). Case #10-1012GCS. Verified Complaint Seeking Declaratory and Injunctive Relief.

[14] *Id.*

[15] *See* Docket for Case 10-1012GCS, on file with Highlands County Clerk of Court. http://www.hcclerk.org/Home.aspx.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The Florida Constitution's Sunshine Law requires public meetings to be noticed and open to the public.[16] Florida courts have held that "open to the public" means the public must be given a reasonable opportunity to attend open public meetings.[17] The First District Court of Appeals held that a public meeting 100 miles away from the relevant jurisdiction was a violation of the state's Sunshine Laws because the affected citizens were not given a "reasonable opportunity to attend."[18]

   In determining whether citizens have a "reasonable opportunity to attend" courts balance the interests of the body holding the public meeting versus the interests of the public in attending (the *Rhea* test).[19] Factors in the balancing test include the distance of the meeting from the constituents it is affecting, efforts of the public body to minimize the impact of the distance, and the need for the public body to hold the meeting at a location that is further away than normal from its constituency.[20] After passage of this bill, cities and counties would still have to comply with s. 286.011, F.S., and the *Rhea* test. Nothing in this bill alters the *Rhea* test or authorizes cities and counties to disregard Florida's Sunshine Law.

B. RULE-MAKING AUTHORITY:

None.

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[16] Section 24(b), Art. I of the State Constitution, and s. 286.011, F.S. (2013).

[17] *Rhea v. School Bd. Of Alachua County,* 636 So.2d 1383 (Fla. 1st DCA 1994).

[18] Id.

[19] Id.

[20] Id. at 1385-1386.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2014, the Local and Federal Affairs Committee adopted one amendment, striking the word "may" and adding the word "shall" at line 26, and reported the bill favorably as a committee substitute to a proposed committee bill.

This analysis has been updated to reflect the amendment.

1 A bill to be entitled
2 An act relating to municipal governing body meetings;
3 amending s. 166.0213, F.S.; authorizing the governing
4 body of a municipality to hold joint meetings with the
5 governing body of the county within which the
6 municipality is located or the governing body of
7 another municipality; authorizing the governing body
8 of a municipality to prescribe the time and place of
9 joint meetings by ordinance or resolution; providing
10 an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 166.0213, Florida Statutes, is amended
15 to read:
16 166.0213 Governing body meetings.—
17 (1) The governing body of a municipality having a
18 population of 500 or fewer residents may hold meetings within 5
19 miles of the exterior jurisdictional boundary of the
20 municipality at such time and place as may be prescribed by
21 ordinance or resolution.
22 (2) The governing body of a municipality may hold joint
23 meetings to receive, discuss, and act upon matters of mutual
24 interest with the governing body of the county within which the
25 municipality is located or the governing body of another
26 municipality at such time and place as shall be prescribed by

27 ordinance or resolution.

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

CS/HB 791

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 791 Coastal Management
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Renuart and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 1 N	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

A coastal construction control line (CCCL) is an upland jurisdictional line established on a county by county basis by the Department of Environmental Protection (DEP) to define the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes. Unless exempted, applicants must receive a permit from DEP to construct a structure seaward of the CCCL. DEP is authorized to grant area-wide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. DEP is also authorized to grant general permits for certain projects if the projects, due to type, size, or temporary nature, will not cause a measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites.

The bill expands the activities that qualify for a DEP issued area-wide permit to include the construction of minor structures. The bill also adds dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act to the list of specific activities or structures that are considered minor structures and special classes of activities. The bill requires DEP to adopt rules to establish criteria and guidelines for area-wide permit applicants. In addition, the bill authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

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. An aquatic preserve is defined as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. The state restricts certain activities in aquatic preserves in order to conserve their unique biological, aesthetic and scientific value.

The bill requires DEP to promote the public use of aquatic preserves, and authorizes DEP to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserves Act. DEP is authorized to grant a privilege or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if the privilege or concession does not deny or interfere with the public's access to the lands and is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council. A privilege or concession can be granted without advertisement and without using a competitive bidding process and cannot be assigned or transferred without the consent of DEP.

The bill appears to have a potentially indeterminate positive fiscal impact on DEP if DEP receives fees for issuing a privilege or lease for the accommodation of visitors and use of aquatic preserves and their associated uplands. The bill appears to have a negative fiscal impact on DEP as a result of reduced permit fees due to some activities shifting to an area-wide or general permit. The bill also has an indeterminate positive fiscal impact on local governments seeking area-wide permits or general permits for minor structures that would have reduced permit fees. (See Fiscal Comments Section)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulation of Coastal Construction

Present Situation

A coastal construction control line (CCCL) is an upland jurisdictional line established on a county-by-county basis by the Department of Environmental Protection (DEP) to define the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.[1]

Section 161.053(1)(a), F.S., establishes the state CCCL permitting program. This is the principal program used by DEP to regulate construction activities on Florida's beach-dune system. The purpose of the CCCL permitting program is to preserve and protect beaches from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.[2] Unless exempted,[3] applicants must receive a permit from DEP to construct a structure seaward of the CCCL.

Local governments are authorized to adopt their own coastal construction zoning and building codes in lieu of the state permitting program. However, these codes must be approved by DEP as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches, which are under DEP's jurisdiction, from imprudent construction that will jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.[4] Additionally, DEP can revoke the authority granted to the local government if DEP determines that the local administration of coastal zoning and building codes is inadequate.

DEP is authorized to grant the following CCCL permits:[5]

- **Administrative Permits** —These permits are required for any coastal construction or activity that is likely to have a material physical effect on the beach-dune system seaward of the CCCL line.[6] Administrative permits are processed in Tallahassee, and once the CCCL application is deemed complete, final agency action (approval or denial) is issued within 90 days. Activities typically authorized by an administrative permit include:
  - Armoring (seawalls, revetments, geotextile tubs);
  - Large multi-family, commercial, and recreational projects (condominiums, beachfront resorts, shopping centers, restaurants, and park improvements);
  - Single-family projects (new homes, pools, additions, and remodeling);
  - Non-habitable major structures (construction of gazebos, large decks, spas, pools); and
  - Minor structures and activities (minor projects that cannot be approved via field permits and require permit manager review).
- **General Permits** —These permits offer a streamlined application and approval process for minor activities or structures that will not interfere with the natural functioning of the beach-dune

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[1] Chapter 62B-33.005(1), F.A.C.
[2] Section 161.053(1)(a), F.S.
[3] Generally, structures existing or under construction before the establishment of the CCCL are exempt from the provisions of s. 161.053, F.S. *See* also Chapter 62B-33.004, F.A.C. for other exemptions.
[4] Section 161.053(3), F.S.
[5] DEP's "Chapter 4-The CCCL Program and Covered Activities." This information is on file with Agriculture & Natural Resources Subcommittee staff.
[6] Chapter 62B-33, F.A.C., outlines the specific permitting, application, and approval processes.

system or sea turtles or their nesting sites. Examples include dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other non-habitable structures. A general permit may be issued for single-family homes that do not advance the "line of construction" or are located landward of an established General Permit Line (the line that defines the seaward limit where general permits can be issued). General permits cannot be used for home additions or multifamily habitable structures. A general permit requires the applicant to meet strict setbacks and dune protection rules and must be submitted as a complete application. Final agency action is issued within 30 days of the application submittal.[7]

- **Field Permits**—These permits are for certain minor structures and activities that have minor impacts and are typically issued by DEP field inspectors. However, permit managers in Tallahassee may also issue field permits.
- **After-the-Fact Permits**—These are administrative permits that authorize work that has already been completed. These are often subject to enforcement actions by DEP and are necessary to assure that the projects have been constructed in compliance with state law.
- **Emergency Permits**—As promulgated in chapter 62B-33.014, F.A.C., emergency permit procedures are used to alleviate conditions resulting from a shoreline emergency.

In addition to these permits, DEP is authorized to grant area-wide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites.[8] Current law specifies that such activities include, but are not limited to:

- Road repairs (not including new construction);
- Utility repairs and replacements;
- Beach cleaning; and
- Emergency response.

Effect of Proposed Changes

The bill expands the activities that qualify for a DEP issued area-wide permit to include the construction of minor structures. The term "minor structure" is not defined in the bill or the Florida Statutes for purposes of CCCLs. However, DEP's rules define a "structure" as the composite result of putting together or building related components in an ordered scheme,[9] and defines a "minor structure" as a structure designed to:

- Be expendable,
- Minimize resistance to forces associated with high frequency storms,
- Break away when subjected to such forces, and
- Have a minor impact on the beach and dune system.[10]

The bill also adds to the list of specific activities or structures that are considered minor structures and special classes of activities to include dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act.

The bill requires DEP to adopt rules to establish criteria and guidelines for area-wide permit applicants.

In addition, the bill authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction

[7] Section 161.053(18), F.S., as promulgated in Chapter 62B-34, F.A.C.
[8] Section 161.053(17), F.S.
[9] Chapter 62B-33.002(60), F.A.C.
[10] Chapters 62B-33.002(60)(b) and 62B-33.002(60), F.A.C

and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

Aquatic Preserves

Present Situation

The Florida Constitution provides that lands under navigable waters, including beaches below the mean high water line, are held by the state, by virtue of its sovereignty, in trust for all the people, and sale of these lands may be authorized by law, but only when in the public interest. Private use of portions of sovereign submerged lands can also be authorized by law, but only when not contrary to the public interest.

In 1975, Florida enacted the Aquatic Preserve Act[11] 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.[12] 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.[13]

DEP's 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 encompass approximately 2.2 million acres.[14]

Section 258.41, F.S., authorizes the Board of Trustees of the Internal Improvement Trust Fund (BOT) 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.

The state restricts certain activities such as the construction of utility cables and pipes and spoil disposal in aquatic preserves to conserve their unique biological, aesthetic and scientific value.[15] Section 258.42, F.S., directs the BOT to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the BOT except when such sale, lease, or transfer is in the public interest.[16]

[11] Sections 258.35 through 258.46, F.S.
[12] Section 258.036, F.S.
[13] Section 258.37(1), F.S.
[14] DEP website on Aquatic Preserves, available at http://www.dep.state.fl.us/coastal/programs/aquatic.htm
[15] Chapter 18-20.004, F.A.C.
[16] Section 258.42(1)(a), F.S.

- The BOT 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.[17]
- No further dredging or filling of submerged lands may be approved by the BOT except for certain activities that must be authorized pursuant to a permit.[18]

Furthermore, structures may not be erected within the aquatic preserve, except:

- Private residential docks may be approved for reasonable ingress or egress of riparian owners. Slips at private residential single-family docks that contain boat lifts or davits that do not float in the water when loaded may not, in whole or in part, be enclosed by walls, but may be roofed if the roof does not overhang more than one foot beyond the footprint of the lift and the boat stored at the lift. These roofs are not included in the square-footage calculation of a terminal platform.[19]
- Private residential multislip docks may be approved if located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.[20]
- Commercial docking facilities shown to be consistent with the use or management criteria of the preserve may be approved if the facilities are located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.[21]
- Structures for shore protection, including restoration of seawalls at their previous location or upland of, or within 18 inches waterward of their previous location, approved navigational aids, or public utility crossings may be approved.[22]

Section 258.43, F.S., grants the BOT with rulemaking authority to implement the provisions of the Florida Aquatic Preserves Act. DEP rules[23] 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 BOT. Docking facilities and even structures for shore protection are restricted as to size and location.

In determining whether to approve or deny any request for activities on sovereign submerged lands in aquatic preserves, BOT will evaluate each on a case-by-case basis and utilize a balancing test to determine whether the social, economic, and/or environmental benefits clearly exceed the costs.[24] BOT may authorize a lease, easement, or consent for the following activities:

- A public navigation project;

[17] Section 258.42(2), F.S.
[18] Section 258.42(3)(a), F.S.
[19] Section 258.42(3)(e), F.S.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] 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.
[24] Chapter 18-20.004(1((a) and (2), F.A.C.

- Maintenance of an existing navigational channel;
- Installation or maintenance approved navigational aids;
- Creation or maintenance of a commercial/industrial dock, pier or a marina;
- Creation or maintenance of private docking facilities for reasonable ingress and egress of riparian owners;
- Minimum dredging for navigation channels attendant to docking facilities;
- Creation or maintenance of a shore protection structure, except that restoration of a seawall or riprap at its previous location, upland of its previous location, or within one foot waterward of its previous location is exempted from any requirement to make application for consent of use;
- Installation or maintenance of oil and gas transportation facilities;
- Creation, maintenance, replacement or expansion of facilities required for the provision of public utilities; and
- Other activities that are a public necessity or that are necessary to enhance the quality or utility of the aquatic preserve.[25]

For the activities listed above, the activity must be designed so that the structure or structures to be built in, on, or over sovereign submerged lands are limited to structures necessary to conduct water dependent activities. Other uses of the aquatic preserve, or human activity within the aquatic preserve, although not originally contemplated, may be approved by BOT, but only subsequent to a formal finding of compatibility with the provisions of ch. 258, F.S. or ch. 18-20, F.A.C.[26] Furthermore, all proposed activities in aquatic preserves having management plans adopted by the BOT must demonstrate that such activities are consistent with the management plan.[27]

Effect of Proposed Changes

The bill requires DEP to promote the public use of aquatic preserves, and authorizes DEP to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserve Act.[28] Moneys received by DEP in trust, or by gift, devise, appropriation, or otherwise must be deposited into the Land Acquisition Trust Fund and appropriated to DEP for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands for any future acquisition or development of aquatic preserves and their associated uplands.

The bill authorizes DEP to grant a privilege[29] or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if the privilege or concession:

- Does not deny or interfere with the public's access to the lands; and
- Is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council (ARC).

A privilege or concession can be granted without advertisement and without using a competitive bidding process and cannot be assigned or transferred without the consent of DEP.[30]

According to DEP, a competitive bidding process is not currently needed due to the fact that this is a new program and it is necessary to encourage small businesses, research untested markets, and preserve the trade secrets or intellectual property of others. The opportunity to advertise for competitive bids will be available to DEP when the untested program matures and is proven.

[25] Chapter 18-20.004(1)(e), F.A.C.
[26] Chapter 18-20.004(1)(f) and (l), F.A.C.
[27] Chapter 18-20.004(3), F.A.C.
[28] Part II of Ch. 258, F.S.
[29] A privilege is not defined in statute or rule. According to DEP's definition, a privilege is not a regulatory function. It is granting a request for public use of the natural resource that is in concert with the Acquisition and Restoration Council-approved management plan, but is a use which occurs only with special permission.
[30] According to DEP, the percentage of income DEP would receive from concessionaires will be outlined in the contract with each concessionaire.

B. SECTION DIRECTORY:

Section 1. Amends s. 161.053, F.S., relating to the regulation of coastal construction and excavation.

Section 2. Creates s. 258.435, F.S., requiring DEP to promote the public use of aquatic preserves.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments Section.

2. Expenditures:

   See Fiscal Comments Section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill has a potentially positive fiscal impact on local governments seeking general or areawide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on private parties who wish to provide goods or services, such as providing food or boat rentals, to visitors in aquatic preserves.

The bill has a potentially positive fiscal impact on private parties seeking general or area-wide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

D. FISCAL COMMENTS:

The bill has a potentially negative fiscal impact on the Permit Fee Trust Fund as a result of the expansion of activities that qualify for DEP-issued area-wide and general permits. The department issues approximately 500 administrative permits per year. According to DEP, the fee for an administrative permit varies from $300 for a dune walkover to $1,000 for a swimming pool. The fee for a general permit varies from $300 for a minor structure to $500 for a major structure. A DEP-issued area-wide permit is $500. DEP anticipates a negative fiscal impact of $66,800 to the Permit Fee Trust Fund per year for permits that currently qualify for administrative permits or general permits and that will qualify for general permits or DEP-issued area-wide permits under the bill (see chart below).

Permitted Activity Type	Number of Permits Anticipated, single-year *(based on CY 2013 data)*	Number of anticipated permits eligible for GPs under proposed bill language	Fee Reduction Per Permit	TOTAL Anticipated Annual Fee Reduction for Activity Type
Swimming pools associated with single-family dwellings	169	84 (50%)	$700	$58,800
Coastal armoring repairs	14	14 (100%)	$200	$2,800
Dune walkovers/dune restoration	26	26 (100%)	$200	$5,200
ANNUAL ANTICIPATED TOTAL FEE REDUCTION (Permit Fee TF)				**$66,800**

The cost for the rule requirements regarding areawide permit modifications can be absorbed by the agency.

Issuing a privilege or concession for the accommodation of visitors could have an indeterminate positive fiscal impact to the Land Acquisition Trust Fund. According to DEP, revenue in the pilot year will be limited by organizational needs. While the amount of potential revenue is unknown, DEP has provided an estimate for the first three years of the program.

EXAMPLE OF ACTIVITY TYPES & POTENTIAL REVENUES				
Year	Activity	Contractor Gross Revenue	% Compensation to State	State Revenue
Year 1	Guided Tour-PILOT	$5,000	0	0
Year 2	Guided Tour	$33,350	15%	$5,000
	Guided Kayak – PILOT	$5,000	0	0
Year 3	Guided Tour	$33,350	15%	$5,000
	Guided Kayak	$100,000	15%	$15,000
	All Inclusive Camping	$300,000	10%	$30,000
Total First 3 Years				$55,000

The bill also authorizes DEP to receive certain gifts or donations, which are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands and for any future acquisition or development of aquatic preserves and their associated uplands. The amounts of gifts or donations the department might receive for these purposes is indeterminate.

The bill requires DEP to promote aquatic preserves and their associated uplands, which DEP estimates will cost $250,000 per year. The proposed Fiscal Year 2014-15 House General Appropriations Act

includes $250,000 in recurring funds from the Land Acquisition Trust Fund for a marketing initiative for Florida's aquatic managed areas and coastal uplands.

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:

   This bill may implicate the single subject provision in Art. III, s. 6 of the Florida Constitution, which provides that "every law enacted by the Legislature shall embrace but one subject matter and properly connected therewith ..." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by a 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.[31] The bill contains one section that pertains to coastal construction permits and another section that pertains to the use of aquatic preserves, which are not necessarily in coastal areas.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to establish criteria and guidelines for areawide permit applicants.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 27 and 32 of the bill provide for the expansion of areawide permits to include minor structures. Minor structures are defined in Rule 62B-33.002(60), F.A.C.; however, the bill does not provide a definition for a minor structure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2013, the Agriculture & Natural Resources Subcommittee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment specifies that DEP issued area-wide permits are expanded to include the construction of minor structures. The amendment requires DEP to adopt rules to establish criteria and guidelines for areawide permit applicants. In addition, the amendment authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures, and for minor reconstruction for existing coastal armoring structures.

Furthermore, the amendment specifies that DEP is authorized to grant a privilege or concession, for the accommodation of visitors to aquatic preserves and their associated state-owned uplands. The amendment removes the authority to grant a lease or permit for this purpose. The amendment specifies that the privilege or concession must be compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council. Lastly, the amendment specifies that

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

DEP is authorized to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserves Act.

1 A bill to be entitled
2 An act relating to coastal management; amending s.
3 161.053, F.S.; revising permit requirements for
4 coastal construction and excavation; authorizing the
5 Department of Environmental Protection to grant
6 areawide permits for certain structures; requiring the
7 department to adopt rules; creating s. 258.435, F.S.;
8 requiring the Department of Environmental Protection
9 to promote the public use of aquatic preserves and
10 their associated uplands; authorizing the department
11 to receive gifts and donations for specified purposes;
12 providing restrictions for moneys received;
13 authorizing the department to grant privileges and
14 concessions for accommodation of visitors in and use
15 of aquatic preserves and their associated uplands;
16 providing restrictions on such privileges and
17 concessions and prohibiting them from being assigned
18 or transferred without the department's consent;
19 providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Subsections (17) and (18) of section 161.053,
24 Florida Statutes, are amended to read:
25 161.053 Coastal construction and excavation; regulation on
26 county basis.—

27 (17) The department may grant areawide permits to local
28 governments, other governmental agencies, and utility companies
29 for special classes of activities in areas under their general
30 jurisdiction or responsibility or for the construction of minor
31 structures, if these activities or structures, due to the type,
32 size, or temporary nature of the activity or structure, will not
33 cause measurable interference with the natural functioning of
34 the beach-dune system or with marine turtles or their nesting
35 sites. Such activities or structures must comply with this
36 section and may include, but are not limited to: road repairs,
37 not including new construction; utility repairs and
38 replacements, or other minor activities necessary to provide
39 utility services; beach cleaning; dune restoration; on-grade
40 walkovers for enhancing accessibility or use in compliance with
41 the Americans with Disabilities Act; and emergency response. The
42 department shall ~~may~~ adopt rules to establish criteria and
43 guidelines for permit applicants. The department must require
44 notice provisions appropriate to the type and nature of the
45 activities for which the areawide permits are sought.
46 (18)(a) The department may grant general permits for
47 projects, including dune restoration, dune walkovers, decks,
48 fences, landscaping, sidewalks, driveways, pool resurfacing,
49 minor pool repairs, and other nonhabitable structures, if the
50 projects, due to type, size, or temporary nature, will not cause
51 a measurable interference with the natural functioning of the
52 beach-dune system or with marine turtles or their nesting sites.

53 Multifamily habitable structures do not qualify for general
54 permits. However, single-family habitable structures and
55 swimming pools associated with such single-family habitable
56 structures that do not advance the line of existing construction
57 and satisfy all siting and design requirements of this section,
58 and minor reconstruction for existing coastal armoring
59 structures, may be eligible for a general permit.
60 (b) The department may adopt rules to establish criteria
61 and guidelines for permit applicants.
62 (c) ~~(a)~~ Persons wishing to use the general permits must, at
63 least 30 days before beginning any work, notify the department
64 in writing on forms adopted by the department. The notice must
65 include a description of the proposed project and supporting
66 documents depicting the proposed project, its location, and
67 other pertinent information as required by rule, to demonstrate
68 that the proposed project qualifies for the requested general
69 permit. Persons who undertake projects without proof of notice
70 to the department, but whose projects would otherwise qualify
71 for general permits, shall be considered to have undertaken a
72 project without a permit and are subject to enforcement pursuant
73 to s. 161.121.
74 (d) ~~(b)~~ Persons wishing to use a general permit must
75 provide notice as required by the applicable local building code
76 where the project will be located. If a building code requires
77 no notice, any person wishing to use a general permit must, at a
78 minimum, post a sign describing the project on the property at

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

79 least 5 days before commencing construction. The sign must be at
80 least 88 square inches, with letters no smaller than one-quarter
81 inch.
82 Section 2. Section 258.435, Florida Statutes, is created
83 to read:
84 258.435 Use of aquatic preserves for the accommodation of
85 visitors.—
86 (1) The Department of Environmental Protection shall
87 promote the public use of aquatic preserves and their associated
88 uplands. The department may receive gifts and donations to carry
89 out the purpose of part II of this chapter. Moneys received in
90 trust by the department by gift, devise, appropriation, or
91 otherwise, subject to the terms of such trust, shall be
92 deposited into the Land Acquisition Trust Fund and appropriated
93 to the department for the administration, development,
94 improvement, promotion, and maintenance of aquatic preserves and
95 their associated uplands and for any future acquisition or
96 development of aquatic preserves and their associated uplands.
97 (2) The department may grant a privilege or concession for
98 the accommodation of visitors in and use of aquatic preserves
99 and their associated state-owned uplands if the privilege or
100 concession does not deny or interfere with the public's access
101 to such lands and is compatible with the aquatic preserve's
102 management plan as approved by the Acquisition and Restoration
103 Council. Such a privilege or concession may be granted without
104 advertisement and without using a competitive bidding process

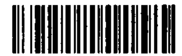
105 and may not be assigned or transferred by the grantee without
106 the consent of the department.
107 Section 3. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Renuart offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 43-106 and insert:
6 guidelines for permit applicants. The department must consult
7 with the Florida Fish and Wildlife Conservation Commission on
8 each proposed areawide permit and must require notice provisions
9 appropriate to the type and nature of the activities for which
10 the areawide permits are sought.
11 (18)(a) The department may grant general permits for
12 projects, including dune restoration, dune walkovers, decks,
13 fences, landscaping, sidewalks, driveways, pool resurfacing,
14 minor pool repairs, and other nonhabitable structures, if the
15 projects, due to type, size, or temporary nature, will not cause
16 a measurable interference with the natural functioning of the
17 beach-dune system or with marine turtles or their nesting sites.

18 Multifamily habitable structures do not qualify for general
19 permits. However, single-family habitable structures and
20 swimming pools associated with such single-family habitable
21 structures that do not advance the line of existing construction
22 and satisfy all siting and design requirements of this section,
23 and minor reconstruction for existing coastal armoring
24 structures, may be eligible for a general permit.
25 (b) The department shall ~~may~~ adopt rules to establish
26 criteria and guidelines for permit applicants.
27 (c) ~~(a)~~ Persons wishing to use the general permits must, at
28 least 30 days before beginning any work, notify the department
29 in writing on forms adopted by the department. The notice must
30 include a description of the proposed project and supporting
31 documents depicting the proposed project, its location, and
32 other pertinent information as required by rule, to demonstrate
33 that the proposed project qualifies for the requested general
34 permit. Persons who undertake projects without proof of notice
35 to the department, but whose projects would otherwise qualify
36 for general permits, shall be considered to have undertaken a
37 project without a permit and are subject to enforcement pursuant
38 to s. 161.121.
39 (d) ~~(b)~~ Persons wishing to use a general permit must
40 provide notice as required by the applicable local building code
41 where the project will be located. If a building code does not
42 require ~~requires no~~ notice, a ~~any~~ person wishing to use a
43 general permit must, at a minimum, post a sign describing the



44 project on the property at least 5 days before commencing
45 construction. The sign must be at least 88 square inches, with
46 letters no smaller than one-quarter inch.
47 Section 2. Section 258.435, Florida Statutes, is created
48 to read:
49 258.435 Use of aquatic preserves for the accommodation of
50 visitors.—
51 (1) The Department of Environmental Protection shall
52 promote the public use of aquatic preserves and their associated
53 uplands. The department may receive gifts and donations to carry
54 out the purpose of part II of this chapter. Moneys received in
55 trust by the department by gift, devise, appropriation, or
56 otherwise, subject to the terms of such trust, shall be
57 deposited into the Land Acquisition Trust Fund and appropriated
58 to the department for the administration, development,
59 improvement, promotion, and maintenance of aquatic preserves and
60 their associated uplands and for any future acquisition or
61 development of aquatic preserves and their associated uplands.
62 (2) The department may grant a privilege or concession for
63 the accommodation of visitors in and use of aquatic preserves
64 and their associated state-owned uplands if the privilege or
65 concession does not deny or interfere with the public's access
66 to such lands and is compatible with the aquatic preserve's
67 management plan as approved by the Acquisition and Restoration
68 Council. A concession will be granted based on business plans,
69 qualifications, approach, and specified expectations or

70 criteria. A privilege or concession may not be assigned or
71 transferred by the grantee without the consent of the
72 department. Upon submittal to the department of a proposed
73 concession or privilege, the department shall post a description
74 of the proposed concession or privilege on the department's
75 website, including a description of the activity to occur under
76 the proposed concession or privilege, the time of year the
77 activity would take place, and the location of the activity.
78 Once the description of the proposed privilege or concession is
79 posted on the department's website and at least 60 days prior to
80 the execution of a privilege or concession agreement, the
81 department must provide an opportunity for public comment on the
82 proposed privilege or concession agreement.
83
84 ---
85 **T I T L E A M E N D M E N T**
86 Remove line 19 and insert:
87 requiring the department to post a description of the proposed
88 privilege or concession on the department's website; directing
89 the department to provide an opportunity for public comment on a
90 proposed privilege or concession agreement; providing an
91 effective date.
92

CS/HB 929

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 929 Little Gasparilla Island, Charlotte County
SPONSOR(S): Roberson
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Miller	Rojas
2) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Sovereignty submerged lands are reserved exclusively to the state and administered by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board). The Department of Environmental Protection (DEP) administers and enforces the state's interests in these submerged lands on behalf of the Board. A dock or other structure may be built on sovereignty submerged lands and preempt the use of those lands to the dock's owner only with prior authorization, usually in a letter of consent or lease issued under rules adopted by the Board. Leases of submerged lands require annual payments to the state in amounts calculated according to Board rules. The terms under which docks and other structures may be built, maintained, repaired, and replaced are also controlled by Board rules, particularly where the structure exists or is proposed for construction in an aquatic preserve.

Lemon Bay Aquatic Preserve was created by statute in 1986 and encompasses areas in Sarasota and Charlotte Counties. Little Gasparilla Island lies between the Gulf of Mexico and Placida Harbor, which is part of the Preserve. Platted into 642 lots, almost the entire Island is occupied by single family residences with two developed condominiums. Because the Island is accessible virtually only by water, many of the interior lots depend upon easements or other interests allowing access to private docks located in Placida Harbor in order to moor their boats. Although some of the docks apparently are covered by submerged land leases, most are not. In order to apply for a conventional submerged lands lease, most of the nonconforming docks would require substantial rebuilding or removal to comply with current law.

The bill creates a process to resolve the issues arising from certain nonconforming private residential docks on sovereignty submerged lands adjacent to Little Gasparilla Island in Placida Harbor. Within two years from the bill becoming law, those owners of property adjacent to or having an established interest in a dock may apply to DEP for a letter of consent (private residential single-family docks) or submerged lands lease (private residential multifamily or multi-slip docks). Submission of an application under the requirements of the bill will be in full and final settlement of all Board claims for the prior nonconforming use.

Those owners complying with the terms for timely application and settlement will be exempted from the statutory permit requirements and certain rule requirements for repair, rebuilding, modification, or expansion of docks under conditions stated in the bill.

The bill provides the act goes into effect upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction[1]

Upon statehood, Florida gained title to all sovereignty submerged lands[2] within its boundaries, to be held in trust for the public.[3] The Board of Trustees of the Internal Improvement Trust Fund (Board) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[4] The Florida Constitution requires the sale of such lands to be authorized by law, but only when in the public interest, and private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[5] When disposing of sovereignty submerged lands, the Board must "ensure maximum benefit and use."[6] The Board is authorized to adopt rules pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereignty submerged lands.[7]

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[8] These rights include ingress, egress, boating, bathing, fishing, and others as defined by law.[9] Riparian landowners must obtain the Board's authorization for installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land.[10] As defined by the Board, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[11] Board authorization may be in the form of consent by rule,[12] letter of consent,[13] or lease.[14] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[15]

Present Situation

Lease of Sovereignty Submerged Lands for Residential Docks

Sovereignty submerged lands may be leased for private residential or non-commercial uses under specified terms.[16] These uses include a private residential single-family dock or pier,[17] private residential multifamily dock or pier,[18] or private residential multi-slip dock.[19]

[1] Portions of this analysis are drawn from staff analysis h0013e.SAC (2012) prepared by staff of the House State Affairs Committee (February 22, 2012).
[2] 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. For purposes of managing sovereignty submerged lands, the term also includes all submerged lands title to which is held by the Board. Rule 18-21.004, F.A.C.
[3] Art. X, s. 11, Fla. Const.; *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).
[4] Sections 253.001, 253.03(1), F.S.
[5] Art. X, s. 11, Fla. Const.
[6] Section 253.03(7)(a), F.S.
[7] Section 253.03(7)(b), F.S.
[8] 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.*
[9] Section 253.141(1), F.S.
[10] Rule 18-21.005(1)(d), F.A.C.
[11] Rules 18-20.003(19), 18-21.003(20), F.A.C.
[12] Rule 18-21.005(1)(b), F.A.C.
[13] 18-21.005(1)(c), F.A.C.
[14] 18-21.005(1)(d), F.A.C.
[15] 18-21.008(1)(b)2., F.A.C.
[16] Section 253.0347, F.S.; Chapter 18-21 & Rule 18-20.004, F.A.C.

Unless otherwise exempt,[20] the use of sovereignty submerged lands for residential docks requires an environmental use permit[21] and authorization from the Board.[22] A lease of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multi-slip dock is for a maximum initial period of 10 years and may be renewed for periods not exceeding 10 years providing the lessee continues to comply with all applicable laws and rules.[23] The lease contract must specify the fees as established by the Board for the use of submerged lands preempted[24] by the dock or pier, as guided by the statute.[25]

The annual fee for a lease of sovereignty submerged lands is based on the greater of 6 percent of the annual income received from the lessee's operation of the property, the base fee of approximately $0.16 per square foot[26] (of preempted submerged lands), or the minimum fee of approximately $500.[27] The base fee and minimum fee amounts were set in 2007 and are adjusted annually based on the past five-year average U.S. Bureau of Labor Services' Consumer Price Index. Certain leases of submerged lands located in an aquatic preserve may be subject to a doubling of the applicable base fee.[28] If the applicant seeks to bring a prior unauthorized use of submerged lands into present compliance, an additional amount is required for unpaid annual lease fees for the period of the unauthorized use together with an additional fee based on two percentage points above the Federal Reserve Bank's discount rate charged to member banks.[29]

The applicant must provide "satisfactory evidence" of having a legal interest in the upland parcel to obtain a lease of sovereignty submerged lands. If that interest is less than fee simple the applicant's interest must cover the entire shoreline of the upland parcel or 65 feet, whichever is less. [30] This requirement does not apply:

- To existing docks or piers previously constructed in compliance with then-applicable Board rules if the proposed activity is repair complying with current Board rules;
- To minor modifications not affecting the preemption boundaries previously authorized by the Board; or
- To proposed activities resulting in a reduced preemption area.[31]

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[17] A "dock or pier used for private recreational or leisure purposes that is located on a single-family riparian parcel or that is shared by two adjacent single-family riparian owners if located on their common riparian rights line." Rule 18-21.003(48), F.A.C. A pier is defined as a structure primarily used for fishing or swimming and not for mooring watercraft. Rule 18-21.003(44), F.A.C.
[18] A "dock or pier on a common riparian parcel or area that is intended to be used for private recreational or leisure purposes by persons or groups of persons with real property interest in a multifamily residential dwelling such as a duplex, a condominium, or attached single-family residences or a residential development such as a residential or mobile home subdivision." Rule 18-21.003(47), F.A.C.
[19] Section 253.0347(1), F.S.
[20] Section 403.813(1)(d), F.S.
[21] Sections 373.422, 373.427, 373.430, F.S.
[22] Sections 253.03, 253.0347, F.S.; Rule 18-21.005(1), F.A.C.
[23] Section 253.0347(1), F.S.
[24] "Preemption" refers to "the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public..." Rule 18-21.003(45), F.A.C.
[25] Section 253.0347(2), F.S. For example, no lease fee is charged for a private residential single family dock having only one wet slip and occupying an area of submerged lands not exceeding a ratio of 10 square feet for each linear foot of shoreline in which the applicant has a sufficient legal interest in the upland parcel.
[26] DEP 2014 Agency Analysis on file with staff.
[27] Rule 18-21.011(1)(a), (1)(b)1., (1)(b)4., F.A.C., and DEP 2014 Agency Analysis on file with staff.
[28] Rule 18-21.011(1)(b)5., F.A.C. The distinction is based on whether the leased submerged lands are adjacent to a natural, unseawalled, or otherwise unprotected area exceeding a certain size.
[29] Rule 18-21.011(1)(b)10., F.A.C.
[30] Rule 18-21.004(1)(d), F.A.C.
[31] Id.

Depending on the applicable facts, the Board's authorization may be by existing rule requiring no further action, by letter of consent, or by lease contract.[32] Authorization may be by letter of consent if the proposed use is:

- A private residential single-family dock with only one wet slip;[33]or
- A private residential single-family or multifamily dock preempting no more than 10 square feet of submerged lands for each linear foot of the applicant's riparian shoreline within a single plan of development (10-to-1 ratio).[34]

Setback, Width, and Area Requirements

For the protection of both the State's interest in sovereignty submerged lands and the riparian rights of other property owners who may be affected by the proposed activity, the Board established certain setback and dimension requirements for proposed docks and piers.[35] All structures, including docks, preempting submerged lands must be set back at least 25 feet from the applicant's riparian rights lines[36] but marginal docks[37] must only be a minimum of 10 feet from the rights lines.[38] Exceptions to this requirement include:

- Private residential single-family docks associated with a parcel that has a shoreline frontage of less than 65 feet;[39]
- Portions of private residential single-family docks that are located between riparian lines less than 65 feet apart;[40]
- Private residential single-family docks shared by two adjacent single-family parcels;[41] and
- Structures built or occurring prior to any requirement for Board authorization.[42]

As noted above, applicants for leases who do not hold ownership to the upland parcel in fee simple are limited to a maximum width of 65 feet for their riparian interest.[43]

Present limits on the area of sovereignty submerged lands preempted by private docks apply to all leases not approved by the Board prior to December 25, 1986.[44] Private residential multifamily docks with three or more wet slips, preempting an area exceeding 10 square feet of sovereignty submerged lands for every linear foot of riparian shoreline, are limited to one wet slip for each approved upland residential unit and may not preempt a total area exceeding 40 square feet for every linear foot of riparian shoreline within a single plan of development (40-to-1 ratio).[45] An exception may be granted for a greater preemption area only if all of the following factors apply:

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[32] Rule 18-21.005(1)(b), (1)(c), (1)(d), F.A.C.

[33] Rule 18-21.005(1)(c)1., F.A.C.

[34] Rule 18-21.005(1)(c)2., F.A.C. Unless otherwise noted, the remaining uses amenable to letter of consent are not relevant to this analysis.

[35] Rule 18-21.004(3), F.A.C.

[36] "Riparian rights lines" may be understood as extensions of the riparian owner's property lines extending from the mean- or ordinary high water mark out to navigable waters. Riparian rights attach to upland parcels bordering navigable waters and include rights to the general use of the water adjacent to the property, to access navigable waters, and to build a dock for such access. *Shore Village Property Owners' Ass'n, Inc. v. Dept. of Environmental Protection*, 824 So. 2d 208, 211 (Fla. 4th DCA 2002); s. 253.141(1), F.S.

[37] A "dock placed immediately adjacent and parallel to the shoreline or seawall, bulkhead or revetment." Rule 18-21.003(35), F.A.C.

[38] Rule 18-21.004(3)(d), F.A.C.

[39] Id.

[40] Id.

[41] Id.

[42] Id. This last exception may apply only to very old structures, as the powers and duties of the Board were first articulated in Ch. 610, s. 2, Laws of Florida (1854) [now codified in s. 253.02, F.S.] and the Board's authority to administer state lands was first described in Ch. 15642, s. 1, Laws of Florida (1931) [now codified in s. 253.03, F.S.].

[43] Rule 18-21.004(1)(d), F.A.C.

[44] Rule 18-21.004(4)(h), F.A.C.

[45] Rule 18-21.004(4)(b), F.A.C.

- The applicant complies with all other applicable statutes and Board rules;
- There is sufficient water depth to accommodate vessels ingressing and egressing the lease area;
- The proposal will not require dredging nor cause adverse impacts on resources in sovereignty submerged lands, or will actually reduce such activities;
- Construction will not adversely affect any endangered, threatened, or special concern species; and
- The applicant offers a net positive effect to offset the proposed use.[46]

Maintenance, Repair,

Once authorized, a dock must be maintained in functional condition.[47] If not otherwise controlled by a current Board authorization, the repair or replacement of an existing structure within the same dimensions and use would be authorized by a letter of consent.[48] However, as discussed below the maintenance, repair, and replacement of structures such as docks in official Aquatic Preserve areas are subject to stricter requirements.

State Aquatic Preserves

Sovereignty submerged lands in areas with exceptional biological, aesthetic, and scientific value may be set aside as aquatic preserves.[49] All sovereignty submerged lands within 25 Florida counties, with certain exceptions, are designated as aquatic preserve areas.[50] Lemon Bay Aquatic Preserve in Charlotte and Sarasota Counties was first designated in 1986.[51] Aquatic preserves are protected by stricter development and construction controls[52] but some structures may be approved, including:

- Private residential docks allowing reasonable ingress or egress of riparian owners; and
- Private multi-slip docks "located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources."[53]

Authorized private docks in aquatic preserves are held to higher standards. Board rules limit the length of allowed docks to the lesser of 500 feet or 20 percent of the width of the waterbody at the dock's location, reserve the Board's ability to control a dock's design and construction to minimize environmental harm by the actual construction and the subsequent use by vessels, and limit the preemption of sovereignty submerged lands to 10 square feet for every linear foot of the applicant's riparian shoreline, among other requirements.[54] The Board also is authorized to enter into management agreements with local governments for administration and enforcement of private dock standards and criteria.[55]

A dock constructed within an aquatic preserve in conformance with then-applicable Board rules and rules of DEP is authorized to be maintained, including routine repair, for continued use subject to the

[46] Rule 18-21.004(4)(b)2.a.-e., F.A.C.
[47] Rule 18-21.004(7)(h), F.A.C.
[48] Rule 18-21.005(1)(c)7., F.A.C.
[49] Section 258.36, F.S.
[50] Section 258.39, F.S. These include Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa, Hernando, and Escambia Counties.
[51] Section 258.3925, F.S., adopted by Ch. 86-186, s. 74, LOF.
[52] Section 258.42, F.S.
[53] Section 258.42(3)(e)1. & (3)(e)2., F.A.C.
[54] Rule 18-20.004(5), (5)(c)1., F.S.
[55] Rule 18-20.004(6), F.S.

current requirements in Ch. 18-21, F.A.C. Unlike the maintenance and repair requirements for structures in other locations, if more than 50 percent of a nonconforming dock or other structure in an aquatic preserve falls into disrepair or is destroyed the entire structure must be brought into full compliance with the Board rules in effect at that time.[56]

Little Gasparilla Island

Little Gasparilla Island is a bridgeless barrier island located in Charlotte County, with access to the Gulf of Mexico to the west and Placida Harbor to the east.[57] Placida Harbor is part of the Lemon Bay Aquatic Preserve.[58] Although the Island is physically connected to Don Pedro Island to the north, the Don Pedro State Park serves as a buffer that only allows for pedestrian access. Thus, Little Gasparilla Island is accessible only by watercraft and emergency vehicles (such as all-terrain vehicles utilized by the Charlotte County Sheriff's Department).[59]

All parcels on Little Gasparilla Island are privately owned and comprise 642 platted lots of varying size. The majority are single family residential. There are two condominium developments, one of 30 residential units and the other of 102 residential units. Docks on the island are owned by individual waterfront property owners, property owner associations, neighborhood groups, or the two condominium associations.[60]

As of 2007 "there (were) 117 docks on the bay side of Little Gasparilla Island. Most of these docks are used by several dwelling units; others are private. In most cases, docks are aligned with access easements or rights-of-way, which provide access to the island interior."[61]

Apparently, the majority of docks on Little Gasparilla Island are not authorized in some manner by the Board. The historic development of the island is represented as depending on lots with bayfront access, and riparian rights to construct and maintain docks, providing easements for interior lots and those on the Gulf to access the docks and thus transportation between the Island and the mainland.[62] According to the Little Gasparilla Property Owners Association:

> The strict application of the 1986 rules to the LGI docks would result in the complete and permanent removal of almost all of the existing multifamily docks that together serve several hundred interior lots, and would require at least the partial reconstruction of most of the existing single-family docks attached to bayfront lots. The loss of essential boat access to virtually all of the interior lots would destroy a substantial portion of the established economic value of those residential properties. And the partial or complete reconstruction of many of the single-family docks attached to bayfront lots would impose a substantial economic burden on those bayfront property owners.[63]

According to the Property Owners Association website, the Dock Association was created to address and resolve the dock compliance issue after what was perceived to be the initiation of enforcement

[56] Rule 18-20.004(5)(a)6., F.A.C.
[57] "Little Gasparilla Community Plan," pg. 1, 4 (September 2007), at http://www.charlottecountyfl.gov/boards-committees/lgiac/Site%20Documents/Forms/AllItems.aspx?Paged=TRUE&p_FileLeafRef=20130111%5fLGI%5fMinutes%2epdf&p_ID=45&PageFirstRow=31&&View={78355091-F961-4AFA-B9BA-28404C7698AF}&InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence (accessed 3/22/2014) [herein "LGI Plan"].
[58] Section 258.3952, F.S.
[59] LGI Plan, 4, 17.
[60] LGI Plan, 4.
[61] LGI Plan, 18.
[62] Information from the Little Gasparilla Property Owners Association, at http://lgpoa.org/island-property/island-dock-information/ (accessed 3/22/2014).
[63] At http://lgpoa.org/island-property/island-dock-information/the-need-for-a-local-bill-preserving-all-existing-little-gasparilla-island-docks/ (accessed 3/22/2014).

action by the Department of Environmental Protection (DEP). The proposals in the bill were developed after lengthy negotiations with DEP in order to resolve compliance issues about the docks.

The Dock Association perceives part of the resolution in the bill as the "grandfathering" into compliance with DEP of the Islanders' present docks.[64] However, present Board rule provides for bringing unregistered grandfathered structures into a binding lease under the procedures of an administrative rule that was repealed in 2012.[65] Because most of the private single-family, multifamily, and multi-slip docks on Little Gasparilla Island appear to have predated the 1986 creation of the Lemon Bay Aquatic Preserve, thus were neither permitted under Ch. 373, Part IV, F.S., nor constructed to compliance with prior or present Board rules, the respective owners may not be able to apply and receive a lease under the statutory changes enacted in 2012.[66]

According to DEP, no enforcement action has been initiated to date. As of the date of this analysis DEP also has not taken a formal position on the bill.

Effect of Proposed Changes

The bill provides an alternative process and two-year period for private owners or the incorporated association holding a submerged land lease for an existing private residential multifamily or private residential multi-slip dock to bring the dock into regulatory compliance with DEP. The dock must have been constructed prior to March 1, 2013. Those owners or entities meeting the compliance requirements created by the bill will be:

1. Exempt from the requirement to obtain a permit for the existing dock under Ch. 373, Part IV, F.S.
2. Permitted to maintain and repair the dock as it existed on March 1, 2013.
3. Permitted to rebuild the entire structure to the March 1, 2013 configuration in the event more than 50 percent of the dock falls into disrepair or is destroyed, as opposed to bringing the entire structure into compliance with rules and statutes existing at the time of the rebuilding.
4. Allowed to make future modifications to the dock conforming to applicable rules without having to reconstruct the existing structure to the rule requirements then in effect.
5. Allowed to make future modifications and obtain an expansion of the submerged land lease for that dock, subject to rules applicable at that time, even if:
    a. The modification does not meet the side setback requirement of at least 25 feet, as stated in present rule, provided the modification does not encroach further into the setback requirement than the present structure.
    b. The present dock is based on a riparian easement that does not meet the minimum width requirement of either the extent of the riparian shoreline or 65 feet.
6. Authorized to obtain a future expansion of the submerged lands lease despite the fact that the existing dock presently, or as modified, would not meet either the 10-to-1 or 40-to-1 ratios.

Under the bill, the owner of a riparian parcel or upland parcel with an interest in a private single-family residential dock will be covered by the foregoing conditions if the dock is subject to a present letter of consent with the Board or the owner applies for a letter of consent under the terms allowed in the bill, within the two year deadline. A timely filed application meeting the requirements in the bill will be in full and final settlement of all claims of the Board for the applicant's noncompliance with rules.

A private residential multifamily or multi-slip dock will be entitled to the above conditions if the following requirements are met:

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[64] Id.

[65] Rule 18-21.002(3), F.A.C., referencing Rule 18-21.00405, F.A.C., repealed on March 12, 2012. Additionally, Rule 18-21.003(56), F.A.C., defines a "registered grandfathered structure" as "any structure that has been formally registered with the department as a grandfathered structure as evidenced by submittal of an acceptable application prior to September 30, 1984."

[66] Section 253.0347, F.S.

1. The property owners on the Island with an established right to use the existing dock incorporate a dock association or homeowners' association, with rights and membership equally available to all such property owners.
2. The dock is covered by an existing submerged lands lease or the association applies to DEP for an initial lease or an expansion of an existing lease within two years from the effective date of the law. A timely filed application meeting the requirements in the bill will be in full and final settlement of all claims of the Board for the applicant's noncompliance with rules. If such application is made:
    a. The lease must be granted if the association provides proof of fee simple title or of a permanent upland riparian easement created for the use of the property owners who are members of the association. No other evidence may be required.
    b. The lease must be granted even if the area historically preempted by the dock encroaches into the normal setback requirements. The lease also must contain language invalidating the lease if a court adjudges the lease to infringe on a neighboring parcel's riparian rights.
    c. If an application meeting the requirements in the bill is timely filed in full and final settlement of all claims of the Board for the applicant's noncompliance with rules, no lease fees in arrears may be charged.

The bill exempts the state, the Board, and DEP from any liability to an owner of an upland riparian parcel or interest holder in a dock for any loss or damage if a court adjudges that a dock authorized under this act encroaches or interferes with the riparian rights of another. This includes damages for any judgment requiring modification or removal of the dock. Finally, the bill does not preclude DEP from taking any enforcement action against any dock or owner that does not meet the applicable requirements of the bill within two years after the bill becomes law.

C. SECTION DIRECTORY:

Section 1: Creates specific exemptions to the requirements of Chs. 258 and 373, F.S., and the rules of the Board of Trustees of the Internal Improvement Trust Fund, for owners of riparian parcels or upland interests associated with certain existing private single-family docks on sovereignty submerged lands in the Lemon Bay Aquatic Preserve, adjacent to Little Gasparilla Island. The docks must have been constructed before March 1, 2013.

Section 2: Applies the exemptions created in Section 1 to private residential single-family docks subject to a letter of consent from DEP on behalf of the Board. If there is not an existing letter of consent, the owner of the riparian parcel or upland interest associated with the dock may apply for a letter of consent for the existing dock within two years from the effective date of the law. A timely filed application meeting the requirements of the bill will be in full and final settlement of all claims of the Board for the prior nonconforming use.

Section 3: Applies the exemptions created in Section 1 to private residential multifamily or multi-slip docks, conditioned on the affected property owners incorporating a dock association or homeowners' association with equal membership available to all owners with an established interest in the dock. Provides the dock must be subject to an existing submerged lands lease or the association must apply for a lease within two years from the effective date of the law. A timely filed application meeting the requirements of the bill will be in full and final settlement of all claims of the Board for the prior nonconforming use.

Section 4: Requires DEP to issue an initial lease of sovereignty submerged lands, or an expansion of an existing lease, on the application of a dock association or homeowners' association if the association provides documentary evidence either of fee simple title to the associated upland parcel or evidence of an associated easement. Requires the lease be issued even if the historically preempted area of submerged lands exceeds the present setback requirements of the Board. Exempts those applying for a lease under the terms of the bill from paying lease fees in arrears and treats a timely

application made under the bill as full and final settlement of all claims of the Board arising from the applicant's noncompliance.

Section 5: Exempts the state, the Board of Trustees of the Internal Improvement Trust Fund, and DEP from liability to an owner of an upland riparian parcel or riparian interest holder for any loss suffered if a court adjudges that any part of a dock authorized by the act encroaches on or interferes with riparian rights of others, including any required modification or removal of a dock.

Section 6: Clarifies DEP is not precluded from taking enforcement action against any dock or the owner of a riparian parcel or any upland interest associated with the dock for failing to comply with the criteria established in the bill within two years of the act becoming law.

Section 7: Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 13, 2014

WHERE? Charlotte County

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2014, the Local & Federal Affairs Committee approved without objection an amendment removing three provisions requiring payments by owners of, or those with a legal interest in, docks affected by the bill. The amendment was requested by the Governor's Office. The payments would have been to settle all claims of the Board of Trustees of the Internal Improvement Trust Fund. This analysis is drawn to the bill as amended.

1 A bill to be entitled
2 An act relating to Little Gasparilla Island, Charlotte
3 County; providing an exception to general law;
4 authorizing future modifications to certain single-
5 family docks, multislip docks, and multifamily docks
6 under certain circumstances; providing that
7 applications filed pursuant to the requirements of the
8 act are full and final settlement of specified claims;
9 limiting the state's liability if a court makes
10 certain determinations relating to such docks;
11 authorizing the Department of Environmental Protection
12 to take enforcement action against docks or owners of
13 riparian parcels or upland interests associated with
14 docks that do not meet specified criteria after a
15 specified date; providing for applicability; providing
16 an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Notwithstanding chapter 258, Florida Statutes,
21 if the criteria set forth in section 2 or section 3 are met
22 within 2 years after the effective date of this act, the owner
23 of the riparian parcel or upland interest associated with an
24 existing private residential single-family dock constructed
25 before March 1, 2013, on sovereignty submerged lands adjacent to
26 Little Gasparilla Island in the Lemon Bay Aquatic Preserve,

27 Charlotte County, or the incorporated association holding the
28 submerged lands lease for an existing private residential
29 multifamily dock or private residential multislip dock
30 constructed before March 1, 2013, on sovereignty submerged lands
31 adjacent to Little Gasparilla Island in the Lemon Bay Aquatic
32 Preserve, shall be:
33 (1) Exempt from the need to obtain a permit under part IV
34 of chapter 373, Florida Statutes, for the existing dock.
35 (2) Permitted to maintain and repair the dock as it
36 existed on March 1, 2013.
37 (3) Permitted to rebuild the entire structure to the dock
38 configuration as of March 1, 2013, if more than 50 percent of
39 the dock falls into a state of disrepair or is destroyed as a
40 result of a natural or manmade force, notwithstanding rule 18-
41 20.004(5)(a)6., Florida Administrative Code.
42 (4) Permitted to make future modifications in conformity
43 with applicable rules without reconstructing any existing
44 portion of the dock to meet current rule requirements.
45 (5) Permitted to make future modifications, and obtain an
46 expansion of the submerged lands lease for a private residential
47 multifamily dock or private residential multislip dock, in
48 conformity with other applicable rules, notwithstanding that:
49 (a) The proposed modification does not meet the side
50 setback requirements of rule 18-21.004(3)(d), Florida
51 Administrative Code. However, the proposed modification may not
52 encroach into the setback farther than the existing dock.

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

53 (b) The existing dock is associated with a riparian
54 easement that does not meet the minimum width requirement of
55 rule 18-21.004(1)(d), Florida Administrative Code.
56 (6) Permitted to obtain a future expansion of the
57 submerged lands lease for a private residential multifamily dock
58 or private residential multislip dock, in conformity with other
59 applicable rules, notwithstanding that the existing dock
60 currently does not, or as modified would not, meet the 10-to-1
61 limit of rule 18-20.004(5)(c)1., Florida Administrative Code, or
62 the 40-to-1 limit of rule 18-21.004(4)(b)2., Florida
63 Administrative Code.
64 Section 2. Section 1 applies to a private residential
65 single-family dock currently covered by a letter of consent or
66 if, within 2 years after the effective date of this act, the
67 owner of the riparian parcel or upland interest associated with
68 the dock applies for a letter of consent to use sovereignty
69 submerged lands from the Department of Environmental Protection
70 acting on behalf of the Board of Trustees of the Internal
71 Improvement Trust Fund. The application for the letter of
72 consent for an existing dock timely filed under this act shall
73 be in full and final settlement of all claims by the Board of
74 Trustees of the Internal Improvement Trust Fund arising from the
75 applicant's noncompliance with applicable rules.
76 Section 3. Section 1 applies to a private residential
77 multifamily dock or private residential multislip dock if the
78 following conditions are met within 2 years after the effective

79 date of this act:
80 (1) Property owners who have an established right to use
81 the existing dock have formed an incorporated dock association
82 or incorporated homeowners' association with bylaws that make
83 membership equally available to all property owners who have an
84 established right to use the existing dock, that provide all
85 members with an equal voice in the governance of the association
86 and an equal obligation to contribute to the maintenance of the
87 dock, and that provide all members with equal access to the
88 dock.
89 (2) The dock is currently fully covered by a submerged
90 lands lease or the incorporated dock association or incorporated
91 homeowners' association has applied to the Department of
92 Environmental Protection for a submerged lands lease covering
93 the existing preempted area. The application for the submerged
94 lands lease for the existing preempted area timely filed under
95 this act shall be in full and final settlement of all claims by
96 the Board of Trustees of the Internal Improvement Trust Fund
97 arising from the applicant's noncompliance with applicable
98 rules.
99 Section 4. If a properly incorporated dock association or
100 homeowners' association applies for an initial submerged lands
101 lease or applies for the expansion of an existing submerged
102 lands lease for an existing dock within 2 years after the
103 effective date of this act:
104 (1) The lease shall be issued if the association has

105 presented documentary evidence of fee simple title to the
106 associated upland parcel or documentary evidence of an
107 associated permanent upland riparian easement created for the
108 exclusive or nonexclusive use of the property owners who are the
109 association members, notwithstanding any provision of rules 18-
110 20 and 18-21, Florida Administrative Code, that may be
111 understood to require other evidence or another form of upland
112 interest.
113 (2) The lease shall be issued, notwithstanding that the
114 historically preempted area extends beyond the side boundaries
115 of the associated upland easement. However, the lease shall
116 contain language invalidating the lease if the lease is found by
117 a court of competent jurisdiction to infringe on the riparian
118 rights of a neighboring parcel.
119 (3) The timely filing under this act of the application
120 for a submerged lands lease shall be in full and final
121 settlement of all claims by the Board of Trustees of the
122 Internal Improvement Trust Fund arising from the applicant's
123 noncompliance with applicable rules, and no lease fees in
124 arrears shall be assessed for submerged lands that may have been
125 preempted by the association's existing dock but not included in
126 any current lease.
127 Section 5. The state, the Board of Trustees of the
128 Internal Improvement Trust Fund, and the Department of
129 Environmental Protection are not liable to the owner of an
130 upland riparian parcel or the riparian interestholder of a dock

131 for any loss or damage suffered by such owner or party if a
132 court of competent jurisdiction determines that any part of any
133 dock authorized by this act encroaches on or interferes with the
134 riparian rights of others or requires the modification or
135 removal of any dock authorized by this act.
136 Section 6. This act does not prevent the Department of
137 Environmental Protection, as staff to the Board of Trustees of
138 the Internal Improvement Trust Fund, from taking enforcement
139 action against a dock, or the owner of a riparian parcel or
140 upland interest associated with a dock, that has not met the
141 criteria of section 2, section 3, or section 4, whichever is
142 applicable, within 2 years after the effective date of this act.
143 Section 7. This act shall take effect upon becoming a law.

CS/HB 949

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 949 East Naples Fire Control and Rescue District, Collier County
SPONSOR(S): Hudson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Miller	Rojas
2) State Affairs Committee		Stramski	Camechis

SUMMARY ANALYSIS

The Isles of Capri Municipal Rescue and Fire Services Capital Improvement District is a municipal services taxing unit (MSTU) created by Collier County to provide fire and rescue services in an unincorporated area of the County. The bill proposes to annex the area currently serviced by the Isles of Capri MSTU into an adjacent independent special fire control and rescue district, the East Naples Fire Control and Rescue District (ENFD).

The current ad valorem millage rate for the Isles of Capri MSTU is 2 mills. The current millage rate imposed in ENFD is 1.5 mills. Because the annexation affects the rate of taxes paid by those in the MSTU, the bill provides for a referendum on the annexation. The present bill provides only that the referendum be conducted according to current election law. The timing of the referendum is important because HB 951 proposes a merger of ENFD with another independent district, the Golden Gate Fire Control and Rescue District. If the referendum on annexation of the MSTU is not conducted prior to the separate referendum on merger of the two independent special fire control and rescue districts, it is unclear whether the voters currently within the MSTU would be able to vote on the separate merger even if the annexation is approved.

The bill describes the present area included within ENFD identically to the description in CS/HB 951, and states the specific date of the referendum is August 26, 2014, the date of the primary election.

The bill provides section 1, which annexes the Isles of Capri MSTU to the ENFD, becomes effective only upon approval of a majority of the qualified electors at a referendum. Sections 2 and 3, creating the ballot question and requiring the referendum, are effective on becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ch. 191, F.S.: Independent Special Fire Control Districts

An independent special fire control district is a type of independent special district[1] created by the Legislature for the purpose of providing fire suppression and related activities within the territorial jurisdiction of the district.[2] Chapter 191, F.S., the "Independent Special Fire Control District Act," is intended to provide standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards for greater public accountability.[3] Chapter 191 controls over more specific provisions in any special act or general law of local application creating a district's charter.[4] The Chapter requires every district be governed by a five member board[5] and provides:

- general powers;[6]
- special powers;[7]
- authority and procedures for the assessment and collection of ad valorem taxes;[8]
- authority and procedures for the imposition, levy and collection of non-ad valorem assessments, charges, and fees;[9] and
- issuance of district bonds and evidence of debt.[10]

The territorial boundaries of an independent special fire control district may be modified, extended, or enlarged with the approval or ratification of the Legislature.[11]

Municipal Services Taxing Unit

A county commission may create, and subsequently merge or abolish, a municipal services taxing unit (MSTU) for part or all of the unincorporated area of the county. The MSTU may be designed to provide a variety of services, from fire protection to law enforcement, recreational facilities, water, garbage

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[1] A "special district" is "a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Section 189.403(1), F.S. An "independent special district" is characterized by having a governing body the members of which are not identical to, all appointed by, or removable at will by, the governing body of a single county or municipality, and by a district budget that is not subject to approval or veto by the governing body of a single county or municipality. Section 189.403(3), F.S.

[2] Section 191.003(5), F.S.

[3] Section 191.002, F.S.

[4] Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section.

[5] Section 191.005(1)(a), F.S. A fire control district may continue to be governed by a 3 member board if authorized by special act adopted in or after 1997. For example, the Golden Gate Fire Control and Rescue District continues to be governed by a 3 member board. Ch. 98-489, s. 1, LOF, as incorporated into the re-codification of the District's charter by Ch. 2000-392, s. 3, LOF.

[6] Section 191.006, F.S. Such powers include the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain.

[7] Section 191.008, F.S.

[8] Sections 191.006(14) & 191.009(1), F.S.

[9] Sections 191.006(11), (15), 191.009(2), (3), (4), 191.011, F.S.

[10] Section 191.012, F.S.

[11] Section 191.014(2), F.S. Art. VIII, sec. 4 of the State Constitution additionally provides that "[b]y law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law."

collection, or other enumerated functions. If the county commission chooses to impose ad valorem taxes within the MSTU to support the services being rendered, the millage rate may not exceed 10 mills.[12]

East Naples Fire Control and Rescue District

The East Naples Fire Control and Rescue District (ENFD) was created in 1961.[13] Wholly contained in Collier County, FL, ENFD provides fire suppression services to approximately 70,000 residents in a territorial jurisdiction of 150 square miles. ENFD has 75 employees, 56 of whom are shift personnel staffing 5 fire stations, and annually responded to a total of 10,235 emergency calls. With a current millage rate of 1.5, ENFD projects ad valorem tax receipts of $10,251,760 for FY 2013-2014.[14]

Isles of Capri Municipal Rescue and Fire Services Capital Improvement District

The Isles of Capri Municipal Rescue and Fire Services Capital Improvement District (Isles of Capri MSTU) is an MSTU created and existing pursuant to Collier County ordinance.[15] The purpose of the MSTU is to provide fire and rescue services within a specific area of unincorporated Collier County. For fiscal year 2013, Isles of Capri MSTU had a fiscal budget of $1.26 million.[16]

The present millage rate imposed in the Isles of Capri MSTU is 2 mills. This prompted residents of 280 homes in part of a subdivision called "Fiddler's Creek" to seek annexation of their property into ENFD, which already provides service to the remainder of that subdivision. At its meeting of July 9, 2013, the Collier County Commission voted unanimously for the County Attorney to negotiate with ENFD to merge the area currently within the Isles of Capri MSTU into ENFD.[17]

Effect of Proposed Changes

The bill incorporates the present area included within the Isles of Capri MSTU within the territorial boundaries of ENFD. Under the bill, the annexation is not effective unless approved by a majority vote of the qualified electors within the MSTU area. The bill also creates the specific ballot question for the referendum, including a provision for the millage rate in the annexed area to be reduced to the 1.5 mills currently imposed in ENFD. The referendum will take place on August 26, 2014, the date of the primary election. No assets or liabilities of Collier County are being transferred to ENFD.

B. SECTION DIRECTORY:

Section 1: Describes the lands presently in ENFD and the Isles of Capri MSTU as the lands to be incorporated in the ENFD at the completion of the annexation.

Section2: Creates the ballot question for annexation to be considered in a referendum of the qualified electors in the MSTU.

Section 3: Calls for a referendum of qualified electors in the Isles of Capri MSTU. Provides the referendum will take place on August 26, 2014. Provides the annexation does not take effect unless approved by a majority vote of the electors. Provides bill sections 2 and 3 are effective upon becoming law.

[12] Section 125.01(1)(q), F.S.
[13] Ch. 61-2034, LOF, as referenced in Ch. 2000-444, s. 1, LOF.
[14] Data as of 10/31/2013, from "Fire Districts Merger Initiative – Merger Playbook," p. 20, at http://ggfire.com/index.asp and http://enfd.org/ (accessed March 31, 2014) [herein "Merger Playbook"].
[15] Collier County, Florida, Code of Ordinances, Part I, Ch. 122, Art. LXVII, section 122-1876, at http://library.municode.com/index.aspx?clientId=10578&stateId=9&stateName=Florida (accessed March 31, 2014).
[16] Katherine Albers, "Isle of Capri fire officials to discuss possible merger with East Naples," Marconews.com at http://www.marconews.com/news/2012/nov/14/isle-of-capri-fire-officials-to-discuss-possible/ (accessed March 31, 2014).
[17] BCC Regular Meeting Minutes, July 9, 2013, 51-60, in possession of staff of the House Local & Federal Affairs Committee.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN?

WHERE?

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

IF YES, WHEN? The bill provides only for a referendum according to the present elections laws.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

No rulemaking authority is created by the bill nor is any needed for implementation of the annexation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The boundary description for ENFD in the committee substitute is identical to that description contained in CS/HB 951 filed this session.

The bill now specifies the date for the referendum is August 26, 2014, providing the referendum on annexation will take place prior to the referendum on merging the East Naples Fire Control and Rescue District with the Golden Gate Fire Control and Rescue District. That merger is the subject of pending CS/HB 951, which provides the referendum on the merger will take place on November 4, 2014.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2014, the Local & Federal Affairs Committee approved without objection a technical amendment, conforming the boundary description for ENFD in the bill with that stated in HB 951. The amendment also clarifies the referendum on annexation will be conducted on the specific date of the primary election in Collier County: August 26, 2014. This analysis is drawn to the bill as amended.

A bill to be entitled

An act relating to the East Naples Fire Control and Rescue District, Collier County; amending chapter 2000-444, Laws of Florida, as amended; revising boundaries of the district for purposes of annexing the Isles of Capri Fire and Rescue District into the district; requiring a referendum; providing an effective date.

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

Section 1. Section 3 of section 2 of chapter 2000-444, as amended by chapter 2012-231, Laws of Florida, is amended to read:

Section 3. Boundaries.—The lands to be incorporated within the East Naples Fire Control and Rescue District consist of the following described lands in Collier County:

A. Beginning at the northeast corner of the Northwest quarter of Section 27, Township 49 South, Range 25 East, thence along the north line of said Section 27, east 45 feet to the east right-of-way line of C-851 (also known as Goodlette-Frank Road), (which right-of-way line lies 45 feet east of, measured at right angles to, and parallel with the north and south quarter section line of said Section 27), to the north

27 line of Lot 11, Naples Improvement Company's Little
28 Farms, Plat Book 2, Page 2; thence east to the east
29 section line of Section 27, Township 49 South, Range
30 25 East; then north along the east line of said
31 Section 27 to the northeast corner of said Section 27;
32 said point also being the southeast corner of Section
33 23 Township 49 South, Range 25 East thence east along
34 the north line of Section 26, Township 49 South, Range
35 25 East to a point 990.0 feet west of the west right-
36 of-way line of Airport Pulling Road; thence south
37 01°30'00" east, 1320.0 feet; thence north 89°25'40"
38 east, 660.0 feet; thence north 01°30'00" west, 1320.0
39 feet to the north line of said Section 26; thence east
40 along said north line of Section 26 to the west right
41 of way line of Airport-Pulling Road; to the south line
42 of said Section 26 (said right-of-way line lying 50
43 feet west of the southeast corner of said Section 26);
44 thence westerly along said south line to the southwest
45 corner of said Section 26; thence northerly along the
46 west line of said Section 26; to the southerly right-
47 of-way line of Golden Gate Parkway (100 feet wide);
48 thence easterly along said southerly right-of-way line
49 to a point lying 1220.00 feet west of the west line of
50 said Airport-Pulling Road; thence northerly parallel
51 with said west right-of-way line to the northerly
52 right-of-way line of said Golden Gate Parkway; thence

53 westerly along the north right-of-way of Golden Gate
54 Parkway to a point 620 feet east and 235.46 feet south
55 of the northwest corner of Lot 8, Naples Improvement
56 Company's Little Farms; thence north 235.46 feet to
57 the north line of Lot 8; thence west along said north
58 line 620 feet to the northwest corner of said Lot 8;
59 thence southerly to that angle point in said east
60 right-of-way line which lies on a line 400.00 feet
61 northerly of (measured at right angles to) and
62 parallel with the north line of Section 34, Township
63 49 South, Range 25 East; thence continuing along said
64 east right-of-way to the north line of Gordon River
65 Homes Subdivision; thence east along the north line of
66 Lots 50, 49, and 48 to a point 22.5 feet east of the
67 northwest corner of Lot 48; thence south parallel to
68 the west line of Lot 48 to the south line of Lot 48;
69 thence west along the south line of Lots 48, 49, and
70 50 to the east right-of-way line of Goodlette-Frank
71 Road; thence continuing along said east right-of-way
72 line, which line lies 100.00 feet east of, measured at
73 right angles to, and parallel with the north and south
74 quarter section line of said Section 34; thence
75 continuing along said east right-of-way line to a
76 point on the north line of the southwest quarter of
77 the northeast quarter of Section 34, Township 49
78 South, Range 25 East; thence continue on said right of

79 way line 460.0 feet; thence north 89°41'30" east
80 494.99 feet; thence south 00°34'06" east 615.88 feet
81 to a point of curvature; thence southwesterly 343.97
82 feet along the arc of a tangential circular curve,
83 concave to the northwest have a radius of 243.97 feet
84 and subtended by a chord which bears south 44°33'25"
85 west 345.84 feet; thence south 89°41'30" west 250.0
86 feet to the easterly right of way line of Goodlette-
87 Frank Road; thence south along said right of way line
88 to a point 48.41 feet south of the north line of the
89 south half of Section 34, Township 49 South, Range 25
90 East; thence north 89°56'59" east 249.79 feet; thence
91 northeasterly 173.98 feet along the arc of a circular
92 curve concave to the northwest having a radius of
93 293.97 feet and being subtended by a chord which bears
94 north 72°59'41" east 171.46 feet; thence south
95 89°47'31" east 808.79 feet; thence north 89°55'05"
96 east 993.64 feet to a point on that bulkhead line as
97 shown on Plate recorded in Bulkhead Line Plan Book 1,
98 Page 25 Collier County Public Records, Collier County,
99 Florida; thence run the following courses along the
100 said Bulkhead line, 47.27 feet along the arc of a non-
101 tangential circular curve concave to the west, having
102 a radius of 32.68 feet and subtended by a chord having
103 a bearing of south 14°08'50" east and a length of
104 43.26 feet to a point of tangency; south 27°17'25"

105 west for 202.44 feet to a point of curvature; 296.89
106 feet along the arc of a curve concave to the
107 southeast, having a radius of 679.46 feet and
108 subtended by a chord having a bearing of south
109 14°46'21" west and a length of 294.54 feet to a point
110 of reverse curvature; 157.10 feet along the arc of a
111 curve concave to the northwest, having a radius of
112 541.70 feet, and subtended by a chord having a bearing
113 of south 10°33'47" west and a length of 156.55 feet to
114 a point of reverse curvature; 307.67 feet along the
115 arc of a curve concave to the northeast; having a
116 radius of 278.30 feet, and subtended by a chord having
117 a bearing of south 12°47'59" east and a length of
118 292.24 feet to a point of reverse curvature; 135.31
119 feet along the arc of a curve concave to the southwest
120 having a radius of 100.00 feet and subtended by a
121 chord having a bearing of south 05°42'27" east and a
122 length of 125.21 feet to a point of tangency; thence
123 south 33°03'21" west for 295.10 feet; and south
124 33°27'51" west 1.93 feet to the north line of the
125 River Park East Subdivision which is also the north
126 line of the south half of the southeast quarter of
127 Section 34, Township 49 South, Range 25 East; thence
128 along the north line of the south half of the
129 southeast quarter of said Section 34, easterly to the
130 west line of Section 35, Township 49 South, Range 25

131 East; thence along the west line of said Section 35,
132 northerly 1320 feet more or less to the northwest
133 corner of the south half of said Section 35; thence
134 along the north line of the south half of said Section
135 35, easterly to the west right-of-way line of State
136 Road No. 31 (Airport Road), which right-of-way lies
137 50.0 feet west of, measured at right angles to, and
138 parallel with the east line of said Section 35; thence
139 along said right-of-way line of State Road No. 31,
140 south 00°13'57" west 1800 feet more or less to a point
141 on said west right-of-way line, which lies north
142 00°13'57" east 848.02 feet and south 89°46'03" west
143 50.00 feet from the southeast corner of said Section
144 35; thence continuing along said west right-of-way
145 line southerly 325.02 feet along the arc of a
146 tangential circular curve concave to the east, radius
147 2914.93 feet, subtended by a chord which bears south
148 02°57'43" east 324.87 feet; thence continuing along
149 said west right-of-way line, tangentially south
150 06°09'22" east 3.13 feet, thence southerly along a
151 curve concave to the southwest, having a central angle
152 of 06°23'18" and a radius of 1860.08 feet, a distance
153 of 207.34 feet; thence south 00°13'57" west 313.03
154 feet more or less to a point on the north line of and
155 20 feet west of the northeast corner of Section 2,
156 Township 50 South, Range 25 East; thence

157 southeasterly, 300.7 feet more or less to a point on
158 the east line of said Section 2 which point lies 300.0
159 feet south of the northeast corner of said Section 2;
160 thence along the east line of the north half of said
161 Section 2, southerly to the southeast corner of the
162 north half of said Section 2; thence along the south
163 line of the north half of said Section 2; westerly to
164 the northeast corner of the southeast quarter of
165 Section 3, Township 50 South, Range 25 East; thence
166 southerly along the east line of the southeast corner
167 of said Section 3 for a distance of 2013.98 feet;
168 thence north 89°37'20" east 662.04 feet; thence south
169 00°17'20" east 119.26 feet; thence south 89°27'40"
170 west 322.00 feet; thence south 00°17'20" east 10.00
171 feet; thence south 89°27'40" west 68.00 feet; thence
172 south 00°17'20" east 361.00 feet; thence north
173 89°27'40" east 68.00 feet; thence south 00°17'20" east
174 140.00 feet; thence south 89°27'40" west 221.81 feet;
175 thence north 01°05'56" west 6.99 feet; thence westerly
176 along the arc of a non-tangential circular curve
177 concave to the north having a radius of 370.00 feet
178 through a central angle of 18°34'13" and being
179 subtended by a chord which bears north 81°50'17" west
180 119.40 feet for a distance of 119.92 feet to a point
181 on the east line of said Section 3; thence southerly
182 along the east line of Section 3, and along the east

183 lines of Sections 10, 15, 22, and 27, all in Township
184 50 South, Range 25 East, to the southeast corner of
185 said Section 27, Township 50 South, Range 25 East;
186 thence westerly along the south line of said Section
187 27, Township 50 South, Range 25 East, and along the
188 western prolongation of said south line to a point
189 1,000 feet west of the mean low water line of the Gulf
190 of Mexico; thence southeasterly along said shoreline
191 to the south line of Section 3, Township 51 South,
192 Range 25 East, thence easterly along the south line of
193 said Section 3, Section 2, Section 1, Township 51
194 South; thence along the south corner of said Section
195 5; thence north along the east line of Section 5,
196 Township 51 South, Range 26 East; thence continue on
197 the north line of Section 25, 26 and part of Section
198 27, Township 49 South, Range 25 East to the point of
199 beginning and also,
200 B. All those lands in Collier County described as:
201 Sections 21, 22, 23, 26, 27, 28, 33, 34 and 35,
202 Township 50 South, Range 26 East; Section 2, 3, 4, 9,
203 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25, 26, 35
204 and 36, Township 51 South, Range 26 East; Sections 1,
205 2, 3 and those portions of Sections 10, 11, 12, and
206 13, Township 52 South, Range 26 East, that lie North
207 of the Marco River; those portion of Section 5, 6, 7
208 and 18, Township 52 South, Range 27 East, that lie

209 West and North of State Road 92; and Sections 7, 8,
210 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30 and 31,
211 Township 51 South, Range 27 East, and those portions
212 of Sections 32 and 33, Township 51 South, Range 27
213 East, that lie west and North of State Road 92,
214
215 C. Less and except the North 1/2 of Section 2 of
216 Township 50 South, Range 25 East and the South 1/2 of
217 Section 35 of Township 49 South, Range 25 East.
218
219 D. Less and except approximately 21.99 acres, more or
220 less: A portion of Lots 7 through 9 of Naples
221 Improvement Company's Little Farms as recorded in Plat
222 Book 2 at page 2 of the Public Records of Collier
223 County, Florida, being more particularly described as
224 follows:
225
226 Commence at the intersection of the East right-of-way
227 of Goodlette-Frank Road (C.R. 851) and the South
228 right-of-way of Golden Gate Parkway; thence run along
229 said South right-of-way for the following four (4)
230 courses:
231 1) thence run north 44°42′45″ east, for a distance of
232 35.36 feet;
233 2) thence run north 89°42′45″ east, for a distance of
234 122.57 feet;

235 3) thence run north 80°12'12" east, for a distance of
236 159.63 feet;
237
238 4) to a point on a circular curve concave northwest,
239 whose radius point bears north 11°26'26" west, a
240 distance of 813.94 feet therefrom; thence run
241 Northeasterly along the arc of said curve to the left,
242 having a radius of 813.94 feet, through a central
243 angle of 22°36'33", subtended by a chord of 319.10
244 feet at a bearing of north 67°15'18" east, for an arc
245 length of 321.18 feet to the intersection of the South
246 right-of-way of said Golden Gate Parkway and the West
247 line of the East 338.24 feet of the West 958.34 feet
248 of Lot 7 of Naples Improvements Company's Little Farms
249 Subdivision as recorded in Plat Book 2 at page 2 of
250 the Public Records of Collier County, Florida, also
251 being the point of beginning of the parcel of land
252 herein described; thence run south 00°16'32" east,
253 along the West line of the East 338.24 feet of the
254 West 958.34 feet of said Lot 7, for a distance of
255 302.90 feet to a point on the South line of said Lot
256 7; thence run along said South line for the following
257 two (2) courses:
258 1) thence run north 89°41'51" east, for a distance of
259 338.41 feet;
260

261 2) thence run north 89°50'24" east, for approximately
262 850 feet to a point on the mean high water line of the
263 west bank of Gordon River, said point herein called
264 Point "A", thence return to the aforementioned point
265 of beginning, thence run along the south right-of-way
266 of said Golden Gate Parkway for the following four (4)
267 courses:
268
269 1) beginning at a point on a circular curve concave
270 northwest, whose radius point bears north 34°02'58"
271 west a distance of 813.94 feet therefrom; thence run
272 Northeasterly along the arc of said curve to the left,
273 having a radius of 813.94 feet, through a central
274 angle of 05°09'09", subtended by a chord of 73.17 feet
275 at a bearing of north 53°22'27" east, for an arc
276 length of 73.20 feet to the end of said curve;
277 2) thence run north 50°47'53" east, for a distance of
278 459.55 feet
279
280 3) to the beginning of a tangential circular curve
281 concave south; thence run Easterly along the arc of
282 said curve to the right, having a radius of 713.94
283 feet; through a central angle of 38°52'20"; subtended
284 by a chord of 475.13 feet at a bearing of north
285 70°14'03" east, for an arc length of 484.37 feet to
286 the end of said curve;

287
288 4) thence run north 89°40′13″ east, for approximately
289 724 feet to a point on the mean high water line of the
290 west bank of Gordon River; thence meander
291 Southwesterly along the mean high water line for
292 approximately 900 feet to the aforementioned Point "A"
293 and the point of ending.
294
295 E. Less and except approximately 112.82 acres, more
296 or less: All of East Naples Industrial Park,
297 according to the plat thereof recorded in Plat Book
298 10, Pages 114 and 115, of the Public Records of
299 Collier County, Florida; all of East Naples Industrial
300 Park Replat No. 1, according to the Plat thereof
301 recorded in Plat Book 17, Pages 38 and 39, of the
302 Public Records of Collier County, Florida; and the
303 Northerly 200 feet of the Southerly 510 feet of the
304 Easterly 250 feet of the Northeast 1/4 of Section 35,
305 Township 49 South, Range 25 East, Collier County,
306 Florida, less and excepting the Easterly 50 feet
307 thereof.
308
309 F. Less and except approximately 6.17 acres, more or
310 less: All that part of Lots 12, 13, and 14, Naples
311 Improvement Company's Little Farms, as recorded in
312 Plat Book 2, Page 2 of the Public Records of Collier

313 County, Florida, being more particularly described as
314 follows:
315
316 Commencing at the Southwest corner of Lot 12, thence
317 along the South line of said Lot 12, north 89°26′51″
318 east 20.00 feet to the East right-of-way line of
319 Goodlette-Frank Road; thence along the East right-of-
320 way line north 00°39′49″ east 10.00 feet to the Point
321 of Beginning of the herein described parcel; thence
322 continue along said East right-of-way north 00°39′49″
323 west 580.00 feet; thence leaving said East right-of-
324 way North 89°20′11″ East 260.12 feet; thence north
325 59°31′13″ east, 153.66 feet; thence south 30°28′42″
326 east, 119.01 feet; thence south 00°33′09″ east, 554.02
327 feet to a line lying 10 feet North of and parallel
328 with said South line of Lot 12; thence along the said
329 parallel line south 89°26′51″ west, 451.54 feet to the
330 point of beginning of the herein described parcel.
331 Bearings are based on the said East line Goodlette-
332 Frank Road being north 00°33′49″ east.
333
334 G. Less and except approximately 12.77 acres, more or
335 less: The West one-half (W 1/2) of the Northwest one-
336 quarter (NW 1/4) of the Northwest one-quarter (NW 1/4)
337 of Section 11, Township 50 South, Range 25 East, lying
338 South of State Road 90 (Tamiami Trail, U.S. 41), in

339 Collier County, Florida, except the South 264 feet,
340 and
341
342 All that part of the South 264 feet of the Southwest
343 one-quarter (SW 1/4) of the Northwest one-quarter (NW
344 1/4) of the Northwest one-quarter (NW 1/4) of Section
345 11, Township 50 South, Range 25 East, in Collier
346 County, Florida, lying north of the northline of
347 Walker's Subdivision as delineated on a Plat of record
348 in plat book 1, at page 36, of the Public Records of
349 Collier County, Florida.
350 TOGETHER WITH:
351 Lots 1 to 8, inclusive, COL-LEE-CO TERRACE, according
352 to plat in Plat Book 1, Page 32, Public Records of
353 Collier County, Florida.
354 LESS AND EXCEPT:
355
356 Those parcels described in Official Records Book 1969,
357 Page 977, and Official Records Book 2119, Page 1344
358 both of the Public Records of Collier County, Florida.
359
360 H. Less and except approximately 6.16 acres, more or
361 less: Being a part of Estuary at Grey Oaks Roadway,
362 Clubhouse and Maintenance Facility Tract, Plat Book
363 36, pages 9-16, Estuary at Grey Oaks Tract B, Plat
364 Book 37, pages 13-18 and part of Section 26, Township

365 49 South, Range 25 East, Collier County, Florida.
366
367 All that part of Estuary at Grey Oaks Roadway,
368 Clubhouse and Maintenance Facility Tracts according to
369 the plat thereof as recorded in Plat Book 36, pages 9-
370 16, Estuary at Grey Oaks Tract B according to the plat
371 thereof as recorded in Plat Book 37, pages 13-18,
372 Public Records of Collier County, Florida, and part of
373 Section 26, Township 49 South, Range 25 East, Collier
374 County, Florida being more particularly described as
375 follows;
376 Commencing at the northwest corner of Tract M of said
377 Estuary at Grey Oaks Roadway, Clubhouse and
378 Maintenance Facility Tracts;
379 Thence along the west line of said Tract M South
380 00°East 613.48 feet to the Point of Beginning of the
381 parcel herein described;
382 Thence continue south 00°20′09″ east 406.67 feet;
383 Thence north 89°24′29″ west 660.00 feet;
384 Thence north 00°20′09″ west 406.66 feet to a point on
385 the boundary of Golf Course Tract 1 of said Estuary at
386 Grey Oaks Tract B;
387 Thence along said boundary south 89°24′33″ east 660.00
388 feet to the Point of Beginning of the parcel herein
389 described;
390 <u>TOGETHER WITH:</u>

391 All that land located within Sections 19, 20, 21, 22,
392 27, 28, 29, 30, 31, 32, 33 and 34 of Township 51
393 South, Range 26 East, and those portions of Sections
394 4, 5 and 6 of Township 52 South, Range 26 East, which
395 lie north of the Marco River, Collier County, Florida.
396 Bearings are based on the west line of said Tract M
397 being south 00°20′09″ east.
398
399 Section 2. At the special referendum election called
400 pursuant to section 3, the ballot question shall be in
401 substantially the following form:
402
403 Shall the Isles of Capri Fire and Rescue District be
404 annexed into the East Naples Fire Control and Rescue
405 district for the purpose of providing fire protection
406 and prevention services to the district, with such
407 district retaining the authority to levy no more than
408 the current rate of 1.5 mills of ad valorem taxation
409 on property located within the district?
410
411 Section 3. This act shall take effect only upon its
412 approval by a majority vote of those qualified electors of the
413 Isles of Capri Fire and Rescue District voting in a referendum
414 to be held in conjunction with the next primary election to be
415 held in Collier County on August 26, 2014, except that this

416 section and section 2 shall take effect upon this act becoming a
417 law.

CS/HB 955

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 955 Fish and Wildlife Conservation FWC
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Massengale	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

The bill makes the following revisions related to various programs under the authority of the Florida Fish and Wildlife Conservation Commission (FWC):

- Allows a person who is required to take a boating safety course as a result of a boating violation to do so online; and specifies that people who must take the course because they were convicted of operating a vessel after consuming alcohol under the age of 21 must take the course at their own expense.
- Extends the pilot program for the mooring of vessels to July 1, 2017, and requires an updated report to be submitted to the Governor and Legislature on January 1, 2017.
- Allows counties to use their portion of vessel registration revenues for additional boating-related activities.
- Specifies that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.
- Repeals the $2 (under 18) and $5 (18 and older) fee the FWC is authorized to charge for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service.
- Repeals the provision allowing any person that meets certain requirements to trawl for shrimp for personal food use in the St. Johns River, if noncommercial trawling is authorized by the FWC. Noncommercial trawling has not been authorized by FWC since 1996.
- Repeals the now outdated Special Recreational Spiny Lobster license.
- Repeals the $50 fee associated with the statewide freshwater trawl seine gear license and the $100 fee associated with the statewide haul seine gear license.
- Repeals the FWC's authority to issue haul seine and trawl permits used in Lake Okeechobee and collect fees.

The bill has a $1,100 negative fiscal impact on the State Game Trust Fund in the FWC and a positive impact to the private sector from the repeal of the Okeechobee haul seine and trawl permit fees, and the statewide freshwater trawl and haul seine annual gear license fees. Although the bill does not increase county-retained vessel registration revenues, the bill allows for additional uses of the revenues. There may be an insignificant fiscal impact to the private sector as a result of authorizing online boater safety courses (see Fiscal Analysis and Economic Impact section for more details).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sections 1 and 3. Boater Safety Course Requirements

Present Situation

A person born on or after January 1, 1988, cannot operate a vessel powered by a motor of 10 horsepower or greater unless that person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the Florida Fish and Wildlife Conservation Commission (FWC) showing that he or she has:[1]

- Completed a FWC-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.

These courses can be taken in person, in a classroom setting, or can be completed online. Failure to comply with the boating safety education requirement is a noncriminal infraction and is punishable by a $50 fine for a first offense.[2]

Section 327.355, F.S., provides that any person under the age of 21 who is convicted of being in control of a vessel with a breath-alcohol level of 0.02 or higher must enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the FWC by rule.[3]

Section 327.731, F.S., requires the following people to enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the FWC by rule:[4]

- A person convicted of a criminal violation of ch. 327, F.S., relating to vessel safety;[5]
- A person convicted of a noncriminal infraction under ch. 327, F.S., where the infraction resulted in a reportable boating accident;[6] and
- A person convicted of two noncriminal infractions when the infractions occur within a 12-month period.[7]

[1] Section 327.395(1), F.S

[2] Section 327.395(7), F.S.

[3] Section 327.355(5)(c), F.S

[4] Section 327.731(1)(a), F.S.

[5] Criminal violations of ch. 327, F.S., include, but are not limited to: unlawfully leaving the scene of a boating accident; reckless operation of a vessel or personal watercraft; boating under the influence of alcohol or drugs; operating a vessel while the privilege to operate is suspended; skiing while impaired or under the influence; allowing a person under the age of 14 to operate a personal watercraft; vessel title or registration fraud; and altering or removing a hull identification number.

[6] A reportable boating accident occurs when the operator of a vessel is in any manner involved in an accident resulting in: personal injury requiring medical treatment beyond first aid; the death of a person; the disappearance of a person under circumstances that indicate the possibility of death or injury; or damage to a vessel or other property that totals $2,000 or more.

[7] Section 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), F.S., defines noncriminal infractions to include violations relating to the following: careless operation; water skiing, aquaplaning, parasailing, and similar activities; interference with navigation; boating-restricted areas and speed limits; required safety equipment, lights, and shapes; a violation of navigation rules that does not result in an accident or that results in an accident not causing serious bodily injury or death, for which there are certain penalties; personal watercraft; boater safety education; operation of overloaded or overpowered vessels; divers-down flags; requirement for an adequate muffler on an airboat; and carelessly causing seagrass scarring, for which there are certain civil penalties upon conviction.

These safety courses are considered Mandatory Education for Violators (MEV) and require a person to enroll in, attend, and successfully complete an in-person boating safety course.[8] Currently, the requirement may not be completed through an online course.[9] The FWC may waive, by rule, attendance requirements for violators of this section residing in areas where a classroom presentation of the course is not available.[10] There are approximately 500 boat operators who are required to complete MEV requirements each year.[11]

Effect of Proposed Changes

The bill amends ss. 327.355 and 327.731, F.S., to allow a person who is required to take the boating safety course as a result of violating certain boating laws to do so online.

The bill also specifies that a person who must take the boating safety course because he or she was convicted of operating a vessel after consuming alcohol under the age of 21 must take the boating safety course at his or her own expense.

In addition, the bill eliminates the FWC's authority to provide waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available. This provision would no longer be necessary since the boating safety class would be offered online.

Section 2. Pilot Program for the Regulation of Mooring Vessels Outside of Public Mooring Fields

Present Situation

Under current law, local governments are prohibited from regulating the anchoring of vessels (other than live-aboard vessels) outside of legally permitted mooring fields.[12] According to FWC, the unregulated anchoring and mooring leads to various problems, including:

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

In 2009, s. 327.4105, F.S., was enacted, creating the Anchoring and Mooring Pilot Program (program). The program directed the FWC, in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore potential options for regulating the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields in five locations around the state.[13] The goals of the program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulations that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;

[8] FWC 2014 Legislative Bill Analysis, February 21, 2014. On file with Agriculture & Natural Resources Subcommittee staff.
[9] *Id.*
[10] Section 327.731, F.S.
[11] FWC 2014 analysis, *supra* at footnote 8.
[12] Section 327.60, F.S.
[13] The five locations include the City of St. Augustine, the City of St. Petersburg, the City of Sarasota, and Monroe County in partnership with the cities of Marathon and Key West, and Marion County in partnership with the City of Stuart.

- Protect the marine environment; and
- Deter improperly stored, abandoned, or derelict vessels.

The program also required a report to be submitted to the Governor and the Legislature by January 1, 2014. The program and all ordinances adopted under the program will expire on July 1, 2014, unless reenacted by the Legislature.

According to the FWC, the process of developing, approving, and adopting the local government ordinances was a more lengthy process than originally anticipated. The FWC met with boating and local government stakeholders in October 2013 to discuss the program findings and challenges that have affected the progress of the program. FWC's recommendation was to extend the program for an additional three years to July 2017.

Effect of Proposed Changes

The bill extends the pilot program to July 1, 2017, and requires an updated report to be submitted to the Governor and Legislature on January 1, 2017.

Section 4. County Vessel Registration Revenues

Present Situation

Current law[14] defines a vessel[15] to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. All vessels operated, used, or stored on state waters are required to be registered with the Florida Department of Highway Safety and Motor Vehicles as either commercial or recreational vehicles, with the following exceptions:[16]

- A vessel operated, used, and stored exclusively on private lakes and ponds;
- A vessel owned by the U.S. Government;
- A vessel used exclusively as a ship's lifeboat; or
- A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.

Vessel registration fees are based on the length of the vessel as follows:[17]

- **Class A-1** – Less than 12 feet in length, except all canoes to which propulsion motors have been attached are included regardless of length: $5.50 for each 12-month period registered.
- **Class A-2** – 12 feet or more and less than 16 feet in length; $16.25 for each 12-month period registered. (County Portion: $2.85 for each 12-month period registered).
- **Class 1** – 16 feet or more and less than 26 feet in length: $28.75 for each 12-month period registered (County Portion: $8.85 for each 12-month period registered).
- **Class 2** – 26 feet or more and less than 40 feet in length: $78.25 for each 12-month period registered (County Portion: $32.85 for each 12-month period registered).
- **Class 3** – 40 feet or more and less than 65 feet in length: $127.75 for each 12-month period registered (County Portion: $56.85 for each 12-month period registered).
- **Class 4** – 65 feet or more and less than 110 feet in length: $152.75 for each 12-month period registered (County Portion: $68.85 for each 12-month period registered).
- **Class 5** – 110 feet or more in length: $189.75 for each 12-month period registered (County Portion: $86.85 for each 12-month period registered).

[14] Section 327.02(39), F.S
[15] A vessel is synonymous with a boat, as referenced in Article VII, s. 1(b), of the Florida Constitution.
[16] Section 328.48(2), F.S.
[17] Section 328.72(1), F.S.

The county portion of the vessel registration fee is part of the total fee (not in addition to) and is derived from recreational vessels only.

Section 328.72(15), F.S., specifies how vessel registration fees are distributed. The portion of vessel registration fees retained by the counties can only be used to provide:

- Recreational channel marking and other uniform waterway markers,
- Public boat ramps, lifts, and hoists;
- Marine railways; and
- Other public launching facilities, derelict vessel removal, and removal of vessels and floating structures deemed a hazard to public safety and health.

In 2006, HB 7175 was signed into law by the Governor[18] and provided, in part, that counties must report annually, by November 1, to the FWC how all county-retained vessel registration revenues are spent, and if the report is not submitted by January 1, the county portion of the vessel registration fee revenues must be deposited into the Marine Resources Conservation Trust Fund. The FWC must return those fees to the county if the county complies with the reporting requirement within the calendar year. According to the FWC,[19] all counties have complied with this reporting requirement, and no county portions of vessel registration fees have been deposited into the Marine Resources Conservation Trust Fund.

Effect of Proposed Changes

The bill amends s. 328.72, F.S., to allow counties to use their portion of vessel registration revenues for the following additional boating-related activities:

- Providing boat piers, docks, and mooring buoys;
- Maintaining or operating recreational channel marking and other uniform waterway markers; public boat ramps, lifts, and hoists; marine railways; boat piers; docks; mooring buoys; and other public launching facilities; and
- Removing derelict vessels and debris that specifically impede boat access (not including the dredging of channels).

Section 5. Fees to Hunt on Areas Subject to Cooperative Agreements between the FWC and the U.S. Forest Service

Present Situation

Pursuant to s. 379.2257(1), F.S., the Florida Legislature authorizes the FWC to enter into cooperative agreements with the U.S. Forest Service to manage species in designated national forests and to further better hunting on these lands. In addition, s. 379.2257(3), F.S., authorizes the FWC to charge, in addition to hunting license fees,[20] up to an additional $5 for every person 18 years of age or older, and up to an additional $2 for every person under the age of 18 for hunting on lands covered by the cooperative agreements. However, the FWC has not charged these fees since 1978.

The FWC also issues a management area permit for residents or nonresidents to hunt on lands owned, leased, or managed by the FWC.[21] This permit is required to hunt on the lands covered by cooperative agreements between the U.S. Forest Service and the FWC that have been established as wildlife management areas. Revenue from these permits is used for the lease, management, and protection of

[18] Ch. 2006-305, L.O.F.
[19] FWC 2014 analysis, *supra* at note 8.
[20] Section 379.354, F.S., provides the various fees for hunting licenses.
[21] Section 379.354(8)(g), F.S.

lands for public hunting and other outdoor recreation. As a result, the permissible fees for hunting on areas covered by cooperative agreements between the U.S. Forest Service and the FWC are duplicative and obsolete.

Effect of Proposed Changes

The bill repeals s. 379.2257(3), F.S., which authorizes the FWC to charge the $2 (under 18) and $5 (18 and older) fees for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service discussed above. Because the FWC issues management area permits to hunt on these lands, the fees are duplicative and obsolete.

<u>Section 6. Regulation of Shrimp Fishing</u>

Present Situation

Section 379.247(5), F.S., authorizes any person to trawl for shrimp in the St. Johns River for his or her own food, if noncommercial trawling is authorized by the FWC, under the following conditions:

- Each person who desires to trawl for shrimp for use as food must obtain a noncommercial trawling permit from the local office of the FWC upon filling out an application on a form prescribed by the FWC and upon paying a $50 fee for the permit.
- All trawling must be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.
- No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.

In January 1996, the Marine Fisheries Commission (predecessor to the FWC) adopted a rule prohibiting the use of trawls in the recreational shrimp fishery.[22] Trawls are only allowed for commercial harvest of shrimp, not for recreational harvest. As a result, noncommercial trawling permits have not been issued since the activity was prohibited in 1996.

Effect of Proposed Changes

The bill repeals s. 379.247(5), F.S., which establishes the permit requirement and $50 fee for noncommercial shrimp trawling for personal food use in the St. Johns River. The activity has been prohibited since 1996 so the requirement is obsolete.

<u>Section 7. Recreational Hunting and Fishing License Exemptions</u>

Present Situation

A person who wants to recreationally hunt or fish in Florida must obtain a recreational license, permit, or authorization number and pay the appropriate fee.[23]

Section 379.353(2), F.S., exempts specified individuals from having to possess a recreational license while hunting or fishing. Section 379.353(2)(g), F.S., provides an exemption for any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Services (DCF), provided DCF furnishes proof.

In 2004, HB 1823 was signed into law by the Governor,[24] creating the Agency for Persons with Disabilities (APD) as an entity separate from DCF. The APD was subsequently tasked with serving the

[22] Chapter 68B-31.007, F.A.C.
[23] Section 379.354, F.S.
[24] Ch. 2004-267, L.O.F.

need of Floridians with developmental disabilities. Consequently, s. 379.353(2)(g), F.S., has an incorrect statutory reference.

Effect of Proposed Changes

The bill amends s. 379.353(2)(g), F.S., to fix the incorrect reference by changing DCF to APD.

The bill also conforms a related cross-reference.

Section 8. Resident Hunting and Fishing Licenses

Present Situation

Pursuant to s. 379.354(4), F.S., an annual gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the FWC, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, an archery season permit, a snook permit, or a spiny lobster permit.

An annual military gold sportsman's license is the same as an annual gold sportsman's license, except that the cost is $18.50 compared to $98.50 for the regular annual gold sportsman's license. However, only a resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve is eligible to purchase the military gold sportsman's license upon submission of a current military identification card.

Effect of Proposed Changes

The bill amends s. 379.354(4), F.S., to specify that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.

Section 9. Special Recreational Spiny Lobster License

Present Situation

The spiny lobster can be harvested both recreationally and commercially in Florida. Spiny lobsters and stone crabs may be harvested recreationally by anyone who has a valid recreational saltwater fishing license.[25] The current recreational bag limit (the number of a species a person may legally harvest) for spiny lobster is six per person, per day during the regular recreational season, which runs from August 6 to March 31.[26] The special spiny lobster sport season occurs annually on the last consecutive Wednesday and Thursday of July.[27] Recreational fishermen may still only harvest six spiny lobsters per day in Monroe County or Biscayne National Park, but may harvest 12 spiny lobsters per day elsewhere. Recreational spiny lobster fishermen must possess a recreational saltwater fishing license and a lobster permit.

The commercial spiny lobster fishing season also runs from August 6 to March 31.[28] However, there is no daily bag limit for commercial spiny lobster fishermen using traps.[29] Commercial spiny lobster fishermen must possess a valid saltwater products license (SPL).[30] A saltwater product is defined as

[25] *See* s. 379.354, F.S.
[26] Chapter 68B-24.005(1), F.A.C.
[27] Chapter 68B.005(2), F.A.C.
[28] Chapter 68B-24.005(1), F.A.C.
[29] For those in the dive fishing industry using bully nets, the commercial daily bag limit is 250.
[30] Section 379.361, F.S.

any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.[31]

There are three types of SPLs in Florida:

- Individual SPL – This license authorizes one person to engage in commercial fishing activities from the shore or a vessel, is issued in the individual's name, and is not tied to any one vessel.[32]
- Crew SPL – This license is the same as an individual SPL, but also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This allows the license holder to take a crew on any vessel and that crew is covered under the person's SPL.[33]
- Vessel SPL – This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This is issued to a vessel, not a named individual.[34]

A restricted species (RS) endorsement is required for those who possess an SPL and commercially harvest or sell the following species: Spanish mackerel, king mackerel, black drum, spotted sea trout, grouper, snapper, red porgy, gray triggerfish, banded rudderfish, almaco jack, golden tilefish, amberjack, sea bass/tropical/ornamental "marine life," black mullet, silver mullet, bluefish, hogfish, blue crab, stone crab, crawfish/spiny lobster, African pompano, Florida pompano, permit, sheepshead, tripletail, clams (Brevard County only), shrimp, flounder, cobia, wahoo, and dolphin.[35]

A RS endorsement is free; however, licensed commercial fishermen, firms, or corporations must qualify or show proof of landings reported under their SPL providing that a specified amount or percentage of their total annual income ($5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer.[36]

In 1994, the spiny lobster was designated a RS.[37] That same year the Florida Legislature created the "special recreational crawfish license," which is now known as the "special recreational spiny lobster license" (SRL).[38] The license, which costs $100, was created to allow individuals who possessed an SPL and a crawfish endorsement on their SPL (and who were legally able to harvest and sell lobster commercially) to exceed the recreational bag limit for personal use. To be eligible, a person must have held both an SPL and a crawfish endorsement during the 1993-1994 license year, and only those initially qualified to purchase the license were allowed to receive the license.

After the creation of the SRL, a new recreational spiny lobster rule was implemented, which[39] established a daily bag limit beginning with 50 during the 2003-2004 season to phase out the SRL. The SRL was only given to certain commercial fishermen so that their bag limit could exceed the recreational bag limit for personal use. Each subsequent year's daily bag limit for the SRL was reduced by five, and by the 2012-2013 license year, the SRL bag limit was less than the daily recreational bag limit, which is currently six. Consequently, this eliminated any reason for a person to obtain an SRL and no SRLs were issued for the 2012-2013 season.

[31] Section 379.101, F.S.
[32] Section 379.354, F.S.
[33] *Id.*
[34] *Id.*
[35] Chapter 68B, F.A.C.
[36] Section 379.361(b), F.S.
[37] Chapter 68B-24.001(4), F.A.C.
[38] Section 379.355, F.S.
[39] Chapter 68B-24.0035, F.A.C.

Effect of Proposed Changes

The bill repeals s. 379.355, F.S., relating to the now outdated and unnecessary Special Recreational Spiny Lobster license.

Section 10. Annual Gear License Fee

Present Situation

Under current law, all commercial fishing operators permitted to fish in freshwaters with trawl seine nets (bag-like nets that are pulled behind a boat to harvest fish)[40] are required to pay a $50 annual gear license fee.[41] All commercial fishing operators permitted to fish in freshwaters with haul seines (long nets pulled by boats to harvest fish)[42] must pay a $100 annual gear license fee.[43] Both fees have been unchanged since 1978.

The FWC issues five statewide freshwater haul seine annual gear licenses each year, which are currently limited to use in Polk and Hillsborough Counties. An FWC rule dictates the number of statewide freshwater haul seines and the locations. The FWC has not issued a statewide trawl seine license in more than 25 years.

Effect of Proposed Changes

The bill amends s. 379.363, F.S., to repeal the $50 fee associated with the statewide freshwater trawl seine gear license and the $100 fee associated with the statewide haul seine gear license.

Section 11. Haul Seine and Trawl Permits Used in Lake Okeechobee.

Present Situation

The FWC is authorized to issue permits for the commercial use of haul or trawl seines on Lake Okeechobee.[44] Fees for the three types of permits, which have not changed since 1976, are as follows:

- Resident trawl seine permit - $50
- Resident haul seine permit - $100
- Nonresident trawl or haul seine permit - $500

Currently, the FWC issues six resident haul seine permits for commercial activity on Lake Okeechobee. Permits for resident trawl seines for commercial activity have not been issued in more than 30 years and a nonresident trawl or haul seine permit has never been issued.[45]

For commercial fishers on Lake Okeechobee, the haul and trawl seine permit fees are required in addition to purchasing a freshwater commercial fishing license and a fish dealer's license (see above for license fees and numbers issued).

[40] FWC 2014 analysis, *supra* at footnote 8.
[41] Section 379.363(1)(h), F.S.
[42] FWC 2014 analysis, *supra* at footnote 8.
[43] Section 379.363(1)(i), F.S.
[44] Section 379.3635, F.S.
[45] *Supra* at footnote 8.

Effect of Proposed Changes

The bill repeals s. 379.3635, F.S., relating to haul seine and trawl permits and fees used in Lake Okeechobee. Pursuant to their constitutional authority, the FWC currently requires permits to use a trawl and haul seine on Lake Okeechobee. Therefore, the bill will only eliminate the fees, not the permitting requirements.

Sections 12, 13, and 14 Conform Cross-References

Section 15 Provides an Effective Date of July 1, 2014

B. SECTION DIRECTORY:

Section 1. Amends s. 327.355, F.S., relating to the operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.

Section 2. Amends s. 327.4105, F.S., relating to the pilot program for the regulation of mooring vessels outside of public mooring fields.

Section 3. Amends s. 327.731, F.S., relating to mandatory education for violators.

Section 4. Amends s. 328.72, F.S., relating to classification, registration, fees and charges, surcharges, disposition of fees, fines, and marine turtle stickers.

Section 5. Repeals s. 379.2257, F.S., relating to a charge to be applied to areas covered by the cooperative agreements with the U.S. Forest Service.

Section 6. Amends s. 379.247, F.S., relating to the regulation of shrimp fishing.

Section 7. Amends s. 379.353, F.S., relating to the recreational hunting and fishing license exemption.

Section 8. Amends s. 379.354, F.S., relating to Resident Hunting and Fishing Licenses.

Section 9. Repeals s. 379.355, F.S., relating to the Special Recreational Spiny Lobster license.

Section 10. Repeals s. 379.363, F.S., relating to the annual gear license fee.

Section 11. Repeals s. 379.3635, F.S., relating to haul seine and trawl permits used in Lake Okeechobee.

Section 12. Amends s. 379.101, F.S., conforming cross-references.

Section 13. Amends s. 379.208, F.S., conforming cross-references.

Section 14. Amends s. 379.401, F.S., conforming cross-references.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   FWC offered the following:

   Fees to hunt on areas subject to cooperative agreements between FWC and the US Forest Service—The FWC has not charged these fees since 1978 so there would be no fiscal impact as a result of repealing the fee requirement.

   Noncommercial shrimp fishing in the St. Johns River permit fees—This activity has been prohibited since 1996 so there would be no fiscal impact as a result of repealing the fee requirement.

   Special recreational spiny lobster license fee—Because the special license has not been issued since the 2011-2012 season, there is no fiscal impact as a result of repealing the license fee.

   Statewide freshwater trawl and haul seine annual gear license fees—The bill has a potentially insignificant negative fiscal impact on the FWC as a result of repealing the statewide trawl and haul seine annual gear license fees. Five licenses are issued each year, resulting in a $500 annual loss of revenue to the State Game Trust Fund for the FWC.

   Haul seine and trawl permits used in Lake Okeechobee—The bill appears to have an insignificant negative fiscal impact on the FWC as a result of repealing the Okeechobee haul seine and trawl permit fees. Six licenses are issued annually and each license is $100 per year, resulting in a $600 annual loss of revenue to the State Game Trust Fund for the FWC.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   Although the bill does not increase county-retained vessel registration revenues, the bill allows for additional uses of the revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The FWC offered the following:

Boater safety course requirements—There may be a small negative fiscal impact on organizations that offer only classroom, in-person courses, but these entities will have the option of making the course available online. It is anticipated that any fiscal impact to these organizations will be minimal. Students taking courses to meet mandatory education requirements make up a small part of the organizations' student load.

Those individuals who will be subject to MEV requirements may experience a small positive fiscal impact since the cost to the student for an MEV classroom course ranges from $30 to $50 and the cost

to a student for online courses ranges from free to $30. For some of these violators, the positive fiscal impact may be even larger since, under current law, they may be required to travel longer distances to find a classroom course to comply with the statute.

Statewide freshwater trawl and haul seine annual gear license fees—Eliminating these fees would result in a $100 annual positive fiscal impact for commercial fishermen.

Okeechobee haul seine and trawl permit fees—Eliminating these fees would result in a $100 annual positive fiscal impact for commercial fishermen.

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 spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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 11, 2014, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment removes all language pertaining to the requirement to obtain a hunting license for the taking of wildlife on public lands, such as wild hogs. The amendment reverts the definition of "game" back to current language that specifies a person is not required to have a hunting license to hunt those species that have not been designated as "game" by FWC, such as wild hogs. The amendment also removes the definition of "wildlife."

1 A bill to be entitled
2 An act relating to the Fish and Wildlife Conservation
3 Commission; amending s. 327.355, F.S.; providing that
4 a boating safety course may be offered in a classroom
5 or online; conforming provisions relating to the
6 reassignment of the boating safety program from the
7 Department of Environmental Protection to the
8 commission; amending s. 327.4105, F.S.; requiring the
9 commission to submit an updated report relating to the
10 regulation of mooring vessels; extending the
11 expiration date of the pilot program for the
12 regulation of mooring vessels; amending s. 327.731,
13 F.S.; providing that a boating safety course may be
14 offered in a classroom or online; eliminating an
15 exemption from boating safety education requirements
16 for boating law violators; amending s. 328.72, F.S.;
17 expanding a county's authorization to use moneys
18 collected from vessel registration fees; repealing s.
19 379.2257(3), F.S., relating to a charge to be applied
20 to areas covered by cooperative agreements with the
21 United States Forest Service over and above the
22 license fee for hunting; amending s. 379.247, F.S.;
23 removing provisions relating to noncommercial
24 trawling; amending s. 379.353, F.S.; conforming
25 provisions relating to the change in responsibility
26 for providing developmental disabilities services from

27 the Department of Children and Families to the Agency
28 for Persons with Disabilities; amending s. 379.354,
29 F.S.; clarifying the activities authorized under an
30 annual military gold sportsman's license; repealing s.
31 379.355, F.S., relating to special recreational spiny
32 lobster licenses; repealing s. 379.363(1)(h) and (i),
33 F.S., relating to the annual gear license fee;
34 repealing s. 379.3635, F.S., relating to haul seine
35 and trawl permits to be used in Lake Okeechobee;
36 amending ss. 379.101, 379.208, and 379.401, F.S.;
37 conforming cross-references; providing an effective
38 date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsection (5) of section 327.355, Florida
43 Statutes, is amended to read:
44 327.355 Operation of vessels by persons under 21 years of
45 age who have consumed alcoholic beverages.—
46 (5) A ~~Any~~ person ~~who is~~ convicted of a violation of
47 subsection (1) shall be ordered by the court to ~~be punished as~~
48 ~~follows~~:
49 (a) ~~The court shall order the defendant to~~ Participate in
50 public service or a community work project for a minimum of 50
51 hours;
52 (b) ~~The court shall order the defendant to~~ Refrain from

53 operating any vessel until the 50 hours of public service or
54 community work has been performed; and
55 (c) Enroll in, attend, and successfully complete, at his
56 or her own expense, a classroom or online boating safety course
57 that meets minimum standards established by commission ~~the~~
58 ~~department by~~ rule.
59 Section 2. Subsections (5) and (6) of section 327.4105,
60 Florida Statutes, are amended to read:
61 327.4105 Pilot program for regulation of mooring vessels
62 outside of public mooring fields.—The Fish and Wildlife
63 Conservation Commission, in consultation with the Department of
64 Environmental Protection, is directed to establish a pilot
65 program to explore potential options for regulating the
66 anchoring or mooring of non-live-aboard vessels outside the
67 marked boundaries of public mooring fields.
68 (5) The commission shall submit a report of its findings
69 and recommendations to the Governor, the President of the
70 Senate, and the Speaker of the House of Representatives by
71 January 1, 2014, and shall submit an updated report by January
72 1, 2017.
73 (6) The pilot program shall expire on July 1, 2017 ~~2014~~,
74 unless reenacted by the Legislature. All ordinances enacted
75 under this section shall expire concurrently with the expiration
76 of the pilot program and shall be inoperative and unenforceable
77 thereafter.
78 Section 3. Subsection (1) of section 327.731, Florida

79 Statutes, is amended to read:
80 327.731 Mandatory education for violators.—
81 (1) <u>A</u> ~~Every~~ person convicted of a criminal violation <u>under</u>
82 ~~of~~ this chapter, ~~every person~~ convicted of a noncriminal
83 infraction under this chapter if the infraction resulted in a
84 reportable boating accident, <u>or</u> ~~and every person~~ convicted of
85 two noncriminal infractions as <u>specified</u> ~~defined~~ in s.
86 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions
87 occurring within a 12-month period, must:
88 (a) Enroll in, attend, and successfully complete, at his
89 or her own expense, a <u>classroom or online</u> boating safety course
90 that <u>is approved by and</u> meets <u>the</u> minimum standards established
91 by ~~the~~ commission ~~by~~ rule; ~~however, the commission may provide~~
92 ~~by rule pursuant to chapter 120 for waivers of the attendance~~
93 ~~requirement for violators residing in areas where classroom~~
94 ~~presentation of the course is not available;~~
95 (b) File with the commission within 90 days proof of
96 successful completion of the course; <u>and</u>
97 (c) Refrain from operating a vessel until he or she has
98 filed ~~the~~ proof of successful completion of the course with the
99 commission.
100
101 ~~Any person who has successfully completed an approved boating~~
102 ~~course shall be exempt from these provisions upon showing proof~~
103 ~~to the commission as specified in paragraph (b).~~
104 Section 4. Subsection (15) of section 328.72, Florida

105 Statutes, is amended to read:
106 328.72 Classification; registration; fees and charges;
107 surcharge; disposition of fees; fines; marine turtle stickers.—
108 (15) DISTRIBUTION OF FEES.—Except for the first $2, $1 of
109 which shall be remitted to the state for deposit into the Save
110 the Manatee Trust Fund created within the Fish and Wildlife
111 Conservation Commission and $1 of which shall be remitted to the
112 state for deposit into the Marine Resources Conservation Trust
113 Fund to fund a grant program for public launching facilities~~,~~
114 pursuant to s. 206.606, giving priority consideration to
115 counties with more than 35,000 registered vessels, moneys
116 designated for the use of the counties, as specified in
117 subsection (1), shall be distributed by the tax collector to the
118 board of county commissioners for use only as provided in this
119 section. Such moneys to be returned to the counties are for the
120 sole purposes of providing, maintaining, or operating
121 recreational channel marking and other uniform waterway markers,
122 public boat ramps, lifts, and hoists, marine railways, boat
123 piers, docks, mooring buoys, and other public launching
124 facilities; and removing~~,~~ derelict vessels, debris that
125 specifically impede boat access, not including the dredging of
126 channels ~~vessel removal~~, and ~~removal of~~ vessels and floating
127 structures deemed a hazard to public safety and health for
128 failure to comply with s. 327.53. Counties shall demonstrate
129 through an annual detailed accounting report of vessel
130 registration revenues that the registration fees were spent as

131 provided in this subsection. This report shall be provided to
132 the Fish and Wildlife Conservation Commission no later than
133 November 1 of each year. If, before ~~prior to~~ January 1 of each
134 calendar year, the ~~annual detailed~~ accounting report meeting the
135 prescribed criteria has still not been provided to the
136 commission, the tax collector of that county may ~~shall~~ not
137 distribute the moneys designated for the use of counties, as
138 specified in subsection (1), to the board of county
139 commissioners but shall, ~~instead,~~ for the next calendar year,
140 remit such moneys to the state for deposit into the Marine
141 Resources Conservation Trust Fund. The commission shall return
142 those moneys to the county if the county fully complies with
143 this section within that calendar year. If the county does not
144 fully comply with this section within that calendar year, the
145 moneys shall remain within the Marine Resources Trust Fund and
146 may be appropriated for the purposes specified in this
147 subsection.
148 Section 5. Subsection (3) of section 379.2257, Florida
149 Statutes, is repealed.
150 Section 6. Paragraph (d) of subsection (4) and subsection
151 (5) of section 379.247, Florida Statutes, are amended to read:
152 379.247 Regulation of shrimp fishing; Clay, Duval, Nassau,
153 Putnam, Flagler, and St. Johns Counties.—
154 (4) DEAD SHRIMP PRODUCTION.—Any person may operate as a
155 commercial dead shrimp producer provided that:
156 (d) ~~No person holding a dead shrimp production permit~~

157 ~~issued pursuant to this subsection shall simultaneously hold a~~
158 ~~permit for noncommercial trawling under the provisions of~~
159 ~~subsection (5).~~ The number of permits issued by the commission
160 for commercial trawling or dead shrimp production in any one
161 year shall be limited to those active in the base year, 1976,
162 and renewed annually since 1976. All permits for dead shrimp
163 production issued pursuant to this section shall be inheritable
164 or transferable to an immediate family member and annually
165 renewable by the holder thereof. Such inheritance or transfer
166 shall be valid upon being registered with the commission. Each
167 permit not renewed shall expire and shall not be renewed under
168 any circumstances.
169 ~~(5) NONCOMMERCIAL TRAWLING.—If noncommercial trawling is~~
170 ~~authorized by the Fish and Wildlife Conservation Commission, any~~
171 ~~person may trawl for shrimp in the St. Johns River for his or~~
172 ~~her own use as food under the following conditions:~~
173 ~~(a) Each person who desires to trawl for shrimp for use as~~
174 ~~food shall obtain a noncommercial trawling permit from the local~~
175 ~~office of the Fish and Wildlife Conservation Commission upon~~
176 ~~filling out an application on a form prescribed by the~~
177 ~~commission and upon paying a fee for the permit, which shall~~
178 ~~cost $50.~~
179 ~~(b) All trawling shall be restricted to the confines of~~
180 ~~the St. Johns River proper in the area north of the Acosta~~
181 ~~Bridge in Jacksonville and at least 100 yards from the nearest~~
182 ~~shoreline.~~

183 ~~(c) No shrimp caught by a person licensed under the~~
184 ~~provisions of this subsection may be sold or offered for sale.~~
185 Section 7. Paragraph (g) of subsection (2) of section
186 379.353, Florida Statutes, is amended to read:
187 379.353 Recreational licenses and permits; exemptions from
188 fees and requirements.—
189 (2) A hunting, freshwater fishing, or saltwater fishing
190 license or permit is not required for:
191 (g) Any person fishing who has been accepted as a client
192 for developmental disabilities services by the <u>Agency for</u>
193 <u>Persons with Disabilities if</u> ~~Department of Children and Family~~
194 ~~Services, provided~~ the <u>agency</u> ~~department~~ furnishes proof
195 thereof.
196 Section 8. Paragraph (j) of subsection (4) of section
197 379.354, Florida Statutes, is amended to read:
198 379.354 Recreational licenses, permits, and authorization
199 numbers; fees established.—
200 (4) RESIDENT HUNTING AND FISHING LICENSES.—The licenses
201 and fees for residents participating in hunting and fishing
202 activities in this state are as follows:
203 (j) Annual military gold sportsman's license, $18.50. <u>A</u>
204 ~~The gold sportsman's license authorizes the person to whom it is~~
205 ~~issued to take freshwater fish, saltwater fish, and game,~~
206 ~~subject to the state and federal laws, rules, and regulations,~~
207 ~~including rules of the commission, in effect at the time of~~
208 ~~taking. Other authorized activities include activities~~

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

209 ~~authorized by a management area permit, a muzzle-loading gun~~
210 ~~season permit, a crossbow season permit, a turkey permit, a~~
211 ~~Florida waterfowl permit, a deer permit, an archery season~~
212 ~~permit, a snook permit, and a spiny lobster permit. Any~~ resident
213 who is an active or retired member of the United States Armed
214 Forces, the United States Armed Forces Reserve, the National
215 Guard, the United States Coast Guard, or the United States Coast
216 Guard Reserve may ~~is eligible to~~ purchase the military gold
217 sportsman's license upon submission of a current military
218 identification card. The annual military gold sportsman's
219 license authorizes the same activities as the annual gold
220 sportsman's license.
221 Section 9. Section 379.355, Florida Statutes, is repealed.
222 Section 10. Paragraphs (h) and (i) of subsection (1) of
223 section 379.363, Florida Statutes, are repealed.
224 Section 11. Section 379.3635, Florida Statutes, is
225 repealed.
226 Section 12. Subsection (30) of section 379.101, Florida
227 Statutes, is amended, to read:
228 379.101 Definitions.—In construing these statutes, where
229 the context does not clearly indicate otherwise, the word,
230 phrase, or term:
231 (30) "Resident" or "resident of Florida" means:
232 (a) For purposes of part VII ~~and for purposes of s.~~
233 ~~379.355~~, a citizen of the United States who has continuously
234 resided in this state for 1 year before applying for a hunting,

235 fishing, or other license. However, for purposes of ss. 379.363,
236 ~~379.3635,~~ 379.364, 379.3711, 379.3712, 379.372, 379.373,
237 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term
238 ~~"resident" or "resident of Florida"~~ means a citizen of the
239 United States who has continuously resided in this state for 6
240 months before applying for a hunting, fishing, or other license.
241 (b) For purposes of part VI~~, except s. 379.355~~:
242 1. A ~~Any~~ member of the United States Armed Forces who is
243 stationed in the state and his or her family members residing
244 with such member; or
245 2. A ~~Any~~ person who has declared Florida as his or her
246 only state of residence as evidenced by a valid Florida driver
247 license or identification card that has ~~with~~ both a Florida
248 address and a Florida residency verified by the Department of
249 Highway Safety and Motor Vehicles, or, in the absence thereof,
250 one of the following:
251 a. A current Florida voter information card;
252 b. A sworn statement manifesting and evidencing domicile
253 in Florida in accordance with s. 222.17;
254 c. Proof of a current Florida homestead exemption; or
255 d. For a child younger than 18 years of age, a student
256 identification card from a Florida school or, if ~~when~~
257 accompanied by his or her parent at the time of purchase, the
258 parent's proof of residency.
259 Section 13. Paragraph (c) of subsection (2) of section
260 379.208, Florida Statutes, is amended to read:

261 379.208 Marine Resources Conservation Trust Fund;
262 purposes.—
263 (2) The Marine Resources Conservation Trust Fund shall
264 receive the proceeds from:
265 (c) All fees collected under ss. 379.2424, ~~379.355,~~
266 379.357, 379.365, 379.366, and 379.3671.
267 Section 14. Paragraph (a) of subsection (1) and paragraph
268 (a) of subsection (3) of section 379.401, Florida Statutes, are
269 amended to read:
270 379.401 Penalties and violations; civil penalties for
271 noncriminal infractions; criminal penalties; suspension and
272 forfeiture of licenses and permits.—
273 (1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One
274 violation if he or she violates any of the following provisions:
275 1. Rules or orders of the commission relating to the
276 filing of reports or other documents required to be filed by
277 persons who hold recreational licenses and permits issued by the
278 commission.
279 2. Rules or orders of the commission relating to quota
280 hunt permits, daily use permits, hunting zone assignments,
281 camping, alcoholic beverages, vehicles, and check stations
282 within wildlife management areas or other areas managed by the
283 commission.
284 3. Rules or orders of the commission relating to daily use
285 permits, alcoholic beverages, swimming, possession of firearms,
286 operation of vehicles, and watercraft speed within fish

287 management areas managed by the commission.
288 4. Rules or orders of the commission relating to vessel
289 size or specifying motor restrictions on specified water bodies.
290 ~~5. Section 379.355, providing for special recreational~~
291 ~~spiny lobster licenses.~~
292 5.~~6.~~ Section 379.354(1)-(15), providing for recreational
293 licenses to hunt, fish, and trap.
294 6.~~7.~~ Section 379.3581, providing hunter safety course
295 requirements.
296 7.~~8.~~ Section 379.3003, prohibiting deer hunting unless
297 required clothing is worn.
298 (3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level
299 Three violation if he or she violates any of the following
300 provisions:
301 1. Rules or orders of the commission prohibiting the sale
302 of saltwater fish.
303 2. Rules or orders of the commission prohibiting the
304 illegal importation or possession of exotic marine plants or
305 animals.
306 3. Section 379.407(2), establishing major violations.
307 4. Section 379.407(4), prohibiting the possession of
308 certain finfish in excess of recreational daily bag limits.
309 5. Section 379.28, prohibiting the importation of
310 freshwater fish.
311 6. Section 379.354(17), prohibiting the taking of game,
312 freshwater fish, or saltwater fish while a required license is

313 suspended or revoked.
314 7. Section 379.3014, prohibiting the illegal sale or
315 possession of alligators.
316 8. Section 379.404(1), (3), and (5) ~~(6)~~, prohibiting the
317 illegal taking and possession of deer and wild turkey.
318 9. Section 379.406, prohibiting the possession and
319 transportation of commercial quantities of freshwater game fish.
320 Section 15. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Goodson offered the following:
3
4 **Amendment**
5 Remove line 316 and insert:
6 8. Section 379.404(1), (3), and (6), prohibiting the
7

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1051 Pub. Rec. & Meetings/Public-Private Partnerships
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Harrington	Williamson
2) Local & Federal Affairs Committee	13 Y, 1 N	Flegiel	Rojas
3) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

Current law authorizes public-private partnerships (P3s) for specified public purpose projects. It authorizes responsible public entities to enter into a P3 for specified qualifying projects if the public entity determines the project is in the public's best interest.

The bill creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that an unsolicited proposal is exempt from public record requirements until such time that the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt for a specified period of time; however, it does not remain exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record exemptions and public meeting exemption are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state government; however, it may create a minimal fiscal impact on local governments.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law
Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and open to public inspection.[4]

Public Record and Public Meeting Exemptions
The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or

[1] Section 286.011(1), F.S.
[2] *Ibid.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Art. I, s. 24(c), Fla. Const.
[6] Section 119.15, F.S.

- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Public-Private Partnerships

Chapter 287, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. Section 287.05712, F.S., authorizes responsible public entities[7] to enter into P3s for specified qualifying projects[8] if the public entity determines the project is in the public's best interest.[9]

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities. Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:[10]

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the responsible public entity must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the entity has received a proposal and will accept other proposals.[11] The responsible public entity must establish a timeframe in which to accept other proposals.[12]

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[7] Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

[8] Section 287.05712(1)(i), F.S., defines "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

[9] Section 287.05712(4)(d), F.S.

[10] Section 287.05712(5), F.S.

[11] Section 287.05712(4)(b), F.S.

[12] *Id.*

After the notification period has expired, the responsible public entity must rank the proposals received in order of preference.[13] If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm.[14] The responsible public entity may reject all proposals at any point in the process.[15]

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt[16] from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.[17] If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[18]

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from pubic meeting requirements.[19] A complete recording of the closed meeting must be made; no portion of the exempt meeting may be held off the record.[20]

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.[21] If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.[22] A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, and replies.[23]

Effect of Proposed Changes

The bill creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

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[13] Section 287.05712(6)(c), F.S.

[14] *Id.*

[15] *Id.*

[16] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[17] Section 119.071(1)(b), F.S.

[18] *Id.*

[19] Section 286.0113(2)(b), F.S.

[20] Section 286.0113(2)(c), F.S.

[21] *Id.*

[22] *Id.*

[23] *Id.*

The bill creates a public record exemption for an unsolicited proposal held by a responsible public entity until the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt until such time that the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for the project. An unsolicited proposal is not exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record exemptions and public meeting exemption are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. amends s. 287.05712, F.S., relating to P3 projects for public facilities and infrastructure; providing a definition; providing an exemption for public records requirements for unsolicited proposals received by a responsible public entity for a specified period; providing an exemption for public meeting requirements for any portion of a meeting of a responsible public entity during which exempt proposals are discussed; requiring a recording to be made of the closed meeting; providing an exemption from public record requirements for the recording of, and any records generated during, a closed meeting for a specified period; providing for future legislative review and repeal of the exemption.

Section 2. provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may create a minimal fiscal impact on local governments that receive unsolicited P3 proposals because staff responsible for complying with the public records request could require

training related to the public record exemption. In addition, local governments could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the state purpose of the law. The bill creates public record and public meeting exemptions for unsolicited proposals for P3 projects that expires after a certain time. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2014, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Provided that an unsolicited proposal remains exempt from public record requirements until the responsible public entity provides notice of an intended decision for a qualifying project, or no more than 90 days after the entity rejects the proposals and issues a notice of intent to reissue

the competitive solicitation or withdraws the solicitation. The bill provided that the unsolicited proposal remained exempt for no more than 12 months.

- Provided that if a responsible public entity did not issue a competitive solicitation, the unsolicited proposal is no longer exempt after 180 days.
- Created a public meeting exemption for any portion of a meeting wherein the exempt unsolicited proposal is discussed.
- Required a recording to be made of the closed portion of the meeting.
- Provided that any recording or records generated during a closed meeting are exempt from public record requirements for a specified period.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

1 A bill to be entitled
2 An act relating to public records and public meetings;
3 amending s. 287.05712, F.S., relating to qualifying
4 public-private projects for public facilities and
5 infrastructure; providing a definition; providing an
6 exemption from public records requirements for
7 unsolicited proposals received by a responsible public
8 entity for a specified period; providing an exemption
9 from public meeting requirements for any portion of a
10 meeting of a responsible public entity during which
11 exempt proposals are discussed; requiring a recording
12 to be made of the closed meeting; providing an
13 exemption from public records requirements for the
14 recording of, and any records generated during, a
15 closed meeting for a specified period; providing for
16 future legislative review and repeal of the exemption;
17 providing a statement of public necessity; providing
18 an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Subsection (16) is added to section 287.05712,
23 Florida Statutes, to read:
24 287.05712 Public-private partnerships; public records and
25 public meetings exemptions.—
26 (16) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

27 (a) As used in this subsection, the term "competitive
28 solicitation" has the same meaning as provided in s. 119.071(1).
29 (b)1. An unsolicited proposal received by a responsible
30 public entity is exempt from s. 119.07(1) and s. 24(a), Art. I
31 of the State Constitution until such time as the responsible
32 public entity provides notice of an intended decision for a
33 qualifying project.
34 2. If the responsible public entity rejects all proposals
35 submitted pursuant to a competitive solicitation for a
36 qualifying project and such entity concurrently provides notice
37 of its intent to seek additional proposals for such project, the
38 unsolicited proposal remains exempt until the responsible public
39 entity provides notice of an intended decision concerning the
40 reissued competitive solicitation for the qualifying project or
41 until the responsible public entity withdraws the reissued
42 competitive solicitation for such project.
43 3. An unsolicited proposal is not exempt for longer than
44 90 days after the initial notice by the responsible public
45 entity rejecting all proposals.
46 (c) If the responsible public entity does not issue a
47 competitive solicitation for a qualifying project, the
48 unsolicited proposal ceases to be exempt 180 days after receipt
49 of the unsolicited proposal by such entity.
50 (d)1. Any portion of a board meeting during which an
51 unsolicited proposal that is exempt is discussed is exempt from
52 s. 286.011 and s. 24(b), Art. I of the State Constitution.

53 2.a. A complete recording must be made of any portion of
54 an exempt meeting. No portion of the exempt meeting may be held
55 off the record.
56 b. The recording of, and any records generated during, the
57 exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I
58 of the State Constitution until such time as the responsible
59 public entity provides notice of an intended decision for a
60 qualifying project or 180 days after receipt of the unsolicited
61 proposal by the responsible public entity if such entity does
62 not issue a competitive solicitation for the project.
63 c. If the responsible public entity rejects all proposals
64 and concurrently provides notice of its intent to reissue a
65 competitive solicitation, the recording and any records
66 generated at the exempt meeting remain exempt from s. 119.07(1)
67 and s. 24(a), Art. I of the State Constitution until such time
68 as the responsible public entity provides notice of an intended
69 decision concerning the reissued competitive solicitation or
70 until the responsible public entity withdraws the reissued
71 competitive solicitation for such project.
72 d. A recording and any records generated during an exempt
73 meeting are not exempt for longer than 90 days after the initial
74 notice by the responsible public entity rejecting all proposals.
75 (e) This subsection is subject to the Open Government
76 Sunset Review Act in accordance with s. 119.15 and shall stand
77 repealed on October 2, 2019, unless reviewed and saved from
78 repeal through reenactment by the Legislature.

79 Section 2. (1) The Legislature finds that it is a public
80 necessity that an unsolicited proposal received by a responsible
81 public entity pursuant to s. 287.05712, Florida Statutes, be
82 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
83 Article I of the State Constitution until a time certain.
84 Prohibiting the public release of unsolicited proposals until a
85 time certain ensures the effective and efficient administration
86 of the public-private partnership process established in s.
87 287.05712, Florida Statutes. Temporarily protecting unsolicited
88 proposals protects the public-private partnership process by
89 encouraging private entities to submit such proposals, which
90 will facilitate the timely development and operation of a
91 qualifying project. Protecting such information ensures that
92 other private entities do not gain an unfair competitive
93 advantage. The public records exemption preserves public
94 oversight of the public-private partnership process by providing
95 for disclosure of the unsolicited proposal when the responsible
96 public entity provides notice of an intended decision; no longer
97 than 90 days after the responsible public entity rejects all
98 proposals received in a competitive solicitation for a
99 qualifying project; or 180 days after receipt of an unsolicited
100 proposal if such entity does not issue a competitive
101 solicitation for a qualifying project related to the proposal.
102 (2) The Legislature further finds that it is a public
103 necessity that any portion of a meeting of the responsible
104 public entity during which an unsolicited proposal that is

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

105 exempt from public records requirements is discussed be made
106 exempt from s. 286.011, Florida Statutes, and s. 24(b), Article
107 I of the State Constitution. The Legislature also finds that it
108 is a public necessity that the recording of, and any records
109 generated during, a closed meeting be made temporarily exempt
110 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
111 the State Constitution. Failure to close any portion of a
112 meeting during which such unsolicited proposal is discussed, and
113 failure to protect the release of the recording and records
114 generated during that closed meeting, would defeat the purpose
115 of the public records exemption. In addition, the Legislature
116 finds that public oversight is maintained because the public
117 records exemption for the recording and records generated during
118 any closed portion of a meeting of the responsible public entity
119 are subject to public disclosure when such entity provides
120 notice of an intended decision; no longer than 90 days after the
121 responsible public entity rejects all proposals received in a
122 competitive solicitation for a qualifying project; or 180 days
123 after receipt of an unsolicited proposal if the responsible
124 public entity does not issue a competitive solicitation for a
125 qualifying project related to the proposal.
126 Section 3. This act shall take effect July 1, 2014.

CS/HB 1055

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1055 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Health Care Appropriations Subcommittee	12 Y, 0 N	Rodriguez	Pridgeon
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Current law requires the Department of Health (DOH) to regulate onsite sewage treatment disposal systems (OSTDSs), which include septic tanks. Generally, OSTDSs are used to treat and dispose of relatively small volumes of wastewater from an individual home or business. Central sewer systems and treatment facilities are used to dispose of and treat wastewater from multiple homes and businesses. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to waterbodies or land, or reused.

An alternative to OSTDSs and central sewer systems are combined systems where the septic tank is connected to the sewer system and a pump moves water from the septic tank into the sewer system. It is generally less expensive for a home or business to install these combined systems compared to connecting directly to a central sewer system. Once a home or business installs the combined system, the existing drainfield will usually remain as a part of a backup system in case there is a power outage that causes the pump to stop pumping wastewater from the septic tank into the sewer system.

Current law also requires a home or business that connects directly to a central sewer system to remove the abandoned septic tank and drainfield. DOH and the Department of Environmental Protection (DEP) currently have the authority to permit and install combined systems. However, there are some uncertainties in the law as to whether the existing drainfield is considered abandoned and must be removed once the combined system is installed even though the drainfield is technically still being used as a backup to the combined system.

The bill provides that in the event DEP, or its designee, approves the use of all or a portion of an existing OSTDS and disposal system as an integral part of a sanitary sewer system, then, as part of the approved sanitary sewer system, the existing OSTDS, including the drainfield, is not required to be abandoned.

The bill has no fiscal impact on state government. The bill has a potential positive fiscal impact on local government-owned utilities and on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Onsite systems

Generally, onsite sewage treatment and disposal systems (OSTDSs) are used to treat and dispose of relatively small volumes of wastewater. An OSTDS is a system that contains:

- A standard subsurface, filled, or mound drainfield system;
- An aerobic treatment unit;
- A graywater system tank;
- A laundry wastewater system tank;
- A septic tank;
- A grease interceptor;
- A pump tank;
- A solids or effluent pump;
- A waterless, incinerating, or organic waste-composting toilet; or
- A sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system.[1]

The term also includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works permitted by the Department of Environmental Protection (DEP).[2]

A septic tank is a watertight receptacle constructed to promote separation of solid and liquid components of wastewater, to provide limited digestion of organic matter, to store solids, and to allow clarified liquid to discharge for further treatment and disposal into a drainfield.[3] A drainfield is defined as a system of open-jointed or perforated piping, approved alternative distribution units, or other treatment facilities designed to distribute effluent for filtration, oxidation, and absorption by the soil within the zone of aeration.[4]

Central Wastewater Collection

A central wastewater collection system consists of central sewers that collect municipal wastewater from homes, businesses, and industries and deliver it to a wastewater treatment facility before it is discharged to waterbodies or land, or reused.[5] Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility.[6]

An alternative to conventional wastewater collection systems is pressure sewers.[7] Pressure sewers differ from conventional gravity collection systems because they break down large solids in the

[1] Section 381.0065(2)(k), F.S.
[2] Section 381.0065(2)(k), F.S.
[3] Chapter 64E-6.002(49), F.A.C.
[4] Chapter 64E-6.002(18), F.A.C.
[5] Environmental Protection Agency, Primer for Municipal Wastewater Treatment Systems, September 2004, available at: water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf
[6] Environmental Protection Agency Wastewater Technology Fact Sheet. On file with Agriculture & Natural Resources Subcommittee staff.
[7] *Id.*

pumping station before they are transported through the collection system.[8] These are typically used in areas that have high groundwater that could seep into the sewer, increasing the amount of wastewater to be treated.[9]

One type of pressure sewer system is the septic tank effluent pump system, also known as a combined system. In these combined systems, wastewater flows into a conventional septic tank to capture solids. The liquid effluent flows to a holding tank containing a pump and control device. The effluent is then pumped and transferred for treatment.[10] According to the Environmental Protection Agency (EPA), retrofitting existing septic tanks in areas served by the combination of septic tanks and drainfield systems could present an opportunity for cost savings. However, a large number must be replaced or expanded over the life of the system because of insufficient capacity, deterioration of concrete tanks, or leaks.[11]

State Regulation for OSTDS

Chapter 381, F.S., requires the Department of Health (DOH) to regulate OSTDSs. Pursuant to s. 381.0065(3), F.S., DOH must:

- Adopt rules;
- Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations relating to OSTDSs;
- Develop a comprehensive program to ensure that OSTDSs are sized, designed, constructed, installed, repaired, modified, abandoned, used, operated, and maintained to prevent groundwater contamination and surface water contamination and to preserve the public health;
- Grant variances in hardship cases;
- Permit the use of a limited number of innovative systems for a specific period when there is compelling evidence that the system will function properly and reliably;
- Issue annual operating permits;
- Establish and collect fees for services related to OSTDSs;
- Conduct enforcement activities;
- Provide or conduct education and training of DOH personnel, service providers, and the public regarding OSTDSs;
- Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of OSTDSs in Florida;
- Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system;
- Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any OSTDS;
- Permit and inspect portable or temporary toilet services and holding tanks; and
- Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems.

Section 381.0065(4), F.S., prohibits any person from constructing, installing, modifying, abandoning, or repairing an OSTDS without first obtaining a DOH permit. DOH is prohibited from making the issuance of the permits contingent upon prior approval by DEP, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053, F.S., must be contingent upon receipt of any required coastal construction control line permit from DEP.

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*

DOH does not permit the use of an OSTDS in the following instances, unless DOH grants a variance from the prohibition:

- The estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd);[12]
- The estimated commercial sewage flow from the establishment is over 5,000 gpd;[13]
- There is a likelihood that the system will receive toxic, hazardous, or industrial wastes;[14]
- A sewer system is available;[15] or
- Any system or flow from the establishment is currently regulated by DEP.[16]

In 1983, DEP entered into an Interagency Agreement with DOH to coordinate the regulation of onsite sewage systems, septage and residuals, and marina pumpout facilities. This agreement sets up procedures for addressing interagency issues related to OSTDSs and central wastewater disposal and treatment facilities.[17]

Connection of Existing OSTDSs to a Central Sewer System

Section 381.00655(1), F.S., requires the owner of a properly functioning OSTDS to connect the OSTDS or the building's plumbing to an available publicly owned or investor-owned sewer system within 365 days after written notification by the owner of the publicly owned or investor-owned sewer system that the system is available for connection. An "available" publicly owned or investor-owned sewer system is a system capable of being connected to the plumbing of an establishment or residence that is not under a DEP moratorium and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence.[18] A publicly owned or investor-owned sewer system is authorized to waive the requirement of mandatory connection if it determines that such connection is not in the public interest due to public health considerations. In addition, a variance can also be granted to an owner of a performance-based OSTDS permitted by DOH as long as the OSTDS is functioning properly and satisfies the conditions of the operating permit.

Chapter 64E-6.011, F.A.C., requires the OSTDS to be abandoned after being connected to a sewer system and further use of the OSTDS is prohibited. Once abandoned, the septic tank and drainfield must be removed. When a home or business installs a combined system, the existing drainfield will usually remain as a part of a backup system in case there is a power outage that causes the pump to stop pumping wastewater from the septic tank into the sewer system. DOH and DEP currently have the authority to permit and install combined systems. However, there are some uncertainties in the law as to whether the existing drainfield is considered abandoned, and must be removed, once the combined system is installed even though the drainfield is technically still being used as a backup to the combined system.

Effect of Proposed Changes

The bill amends s. 381.00655(1), F.S., to provide that in the event DEP, or its designee, approves the use of all or a portion of an existing OSTDS and disposal system as an integral part of a sanitary sewer system, then, as part of the approved sanitary sewer system, the existing OSTDS, including the drainfield, is not required to be abandoned.

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[12] Chapter 64E-6.008, F.A.C. DEP issues permits for systems that discharge more than 10,000 gpd. *See* Chapter 62-4, F.A.C.
[13] DEP website on Septic Systems, available at http://www.dep.state.fl.us/water/wastewater/dom/septic.htm
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Section 381.0065(2)(a), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.00655, F.S., relating to requirements for the connection of existing onsite sewage treatment and disposal systems to central sewerage systems.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill has a potential positive fiscal impact on local government-owned utilities that, under certain circumstances, will not have to put in sewer pipes to connect to properties that currently have septic tanks.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill has a positive fiscal impact on the private sector. If DEP approves the use of all or portion of the existing OSTDS as an integral part of a sewer system, then the existing OSTDS is not required to be abandoned. Therefore, the costs associated with abandonment including but not limited to the removal of the existing OSTDS need not be borne by an applicable business or residential property. Additionally, this bill has a potential positive fiscal impact on investor-owned sewer system that, under certain circumstances, will not have to put in sewer pipes to connect to properties that currently have septic tanks.

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. RULEMAKING 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 strike-all amendment deletes everything related to combined systems in s. 381.0065, F.S. The amendment amends s. 381.00655, F.S., to specify that an existing OSTDS, including the drainfield, is not required to be abandoned if DEP, or DEP's designee, approves the use of all or a portion of the existing OSTDS as an integral part of a sanitary sewer system.

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.00655, F.S.;
4 providing a condition under which connection of an
5 existing onsite sewage treatment and disposal system
6 to a central sewerage system does not require the
7 onsite system to be abandoned; providing an effective
8 date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (c) is added to subsection (1) of
13 section 381.00655, Florida Statutes, to read:
14 381.00655 Connection of existing onsite sewage treatment
15 and disposal systems to central sewerage system; requirements.—
16 (1)
17 (c) An existing onsite sewage treatment and disposal
18 system, including the drainfield, need not be required to be
19 abandoned if the Department of Environmental Protection or the
20 department's designee approves the use of all or a portion of
21 the existing onsite sewage treatment and disposal system as an
22 integral part of a sanitary sewer system.
23 Section 2. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Mayfield offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (c) is added to subsection (1) of
7 section 381.00655, Florida Statutes, to read:
8 381.00655 Connection of existing onsite sewage treatment
9 and disposal systems to central sewerage system; requirements.—
10 (1)
11 (c) The owner of an existing onsite sewage treatment and
12 disposal system may, with the approval of the Department of
13 Environmental Protection or the department's designee, use all
14 or a portion of the existing onsite sewage treatment and
15 disposal system, including the drainfield, as an integral part
16 of a sanitary sewer system. Prior to approval by the department,
17 the existing septic tank must be evaluated by a registered

18 septic tank contractor to ensure that the tank is not in failure
19 at the time of transition.
20 Section 2. This act shall take effect July 1, 2014.
21
22
23 ---
24 **T I T L E A M E N D M E N T**
25 Remove everything before the enacting clause and insert:
26 A bill to be entitled
27 An act relating to onsite sewage treatment and disposal systems;
28 amending s. 381.00655, F.S.; allowing the owner of an existing
29 onsite sewage treatment and disposal system use all or a portion
30 of the existing onsite sewage treatment and disposal system,
31 including the drainfield, as an integral part of a sanitary
32 sewer system; requiring that the existing septic tank must be
33 evaluated by a registered septic tank contractor to ensure that
34 the tank is not in failure at the time of transition; providing
35 an effective date.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Mayfield offered the following:
3
4 **Amendment to Amendment (446269) by Representative Mayfield**
5 **(with title amendment)**
6 Between lines 5 and 6 of the amendment, insert:
7 Section 1. Section 381.0065(4)(u)3., Florida Statutes, is
8 amended to read:
9 381.0065 Onsite sewage treatment and disposal systems;
10 regulation.—
11 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
12 construct, repair, modify, abandon, or operate an onsite sewage
13 treatment and disposal system without first obtaining a permit
14 approved by the department. The department may issue permits to
15 carry out this section, but shall not make the issuance of such
16 permits contingent upon prior approval by the Department of
17 Environmental Protection, except that the issuance of a permit

18 for work seaward of the coastal construction control line
19 established under s. 161.053 shall be contingent upon receipt of
20 any required coastal construction control line permit from the
21 Department of Environmental Protection. A construction permit is
22 valid for 18 months from the issuance date and may be extended
23 by the department for one 90-day period under rules adopted by
24 the department. A repair permit is valid for 90 days from the
25 date of issuance. An operating permit must be obtained prior to
26 the use of any aerobic treatment unit or if the establishment
27 generates commercial waste. Buildings or establishments that use
28 an aerobic treatment unit or generate commercial waste shall be
29 inspected by the department at least annually to assure
30 compliance with the terms of the operating permit. The operating
31 permit for a commercial wastewater system is valid for 1 year
32 from the date of issuance and must be renewed annually. The
33 operating permit for an aerobic treatment unit is valid for 2
34 years from the date of issuance and must be renewed every 2
35 years. If all information pertaining to the siting, location,
36 and installation conditions or repair of an onsite sewage
37 treatment and disposal system remains the same, a construction
38 or repair permit for the onsite sewage treatment and disposal
39 system may be transferred to another person, if the transferee
40 files, within 60 days after the transfer of ownership, an
41 amended application providing all corrected information and
42 proof of ownership of the property. There is no fee associated
43 with the processing of this supplemental information. A person

44 may not contract to construct, modify, alter, repair, service,
45 abandon, or maintain any portion of an onsite sewage treatment
46 and disposal system without being registered under part III of
47 chapter 489. A property owner who personally performs
48 construction, maintenance, or repairs to a system serving his or
49 her own owner-occupied single-family residence is exempt from
50 registration requirements for performing such construction,
51 maintenance, or repairs on that residence, but is subject to all
52 permitting requirements. A municipality or political subdivision
53 of the state may not issue a building or plumbing permit for any
54 building that requires the use of an onsite sewage treatment and
55 disposal system unless the owner or builder has received a
56 construction permit for such system from the department. A
57 building or structure may not be occupied and a municipality,
58 political subdivision, or any state or federal agency may not
59 authorize occupancy until the department approves the final
60 installation of the onsite sewage treatment and disposal system.
61 A municipality or political subdivision of the state may not
62 approve any change in occupancy or tenancy of a building that
63 uses an onsite sewage treatment and disposal system until the
64 department has reviewed the use of the system with the proposed
65 change, approved the change, and amended the operating permit.
66 (u)1. The owner of an aerobic treatment unit system shall
67 maintain a current maintenance service agreement with an aerobic
68 treatment unit maintenance entity permitted by the department.
69 The maintenance entity shall inspect each aerobic treatment unit

70 system at least twice each year and shall report quarterly to
71 the department on the number of aerobic treatment unit systems
72 inspected and serviced. The reports may be submitted
73 electronically.
74 2. The property owner of an owner-occupied, single-family
75 residence may be approved and permitted by the department as a
76 maintenance entity for his or her own aerobic treatment unit
77 system upon written certification from the system manufacturer's
78 approved representative that the property owner has received
79 training on the proper installation and service of the system.
80 The maintenance entity service agreement must conspicuously
81 disclose that the property owner has the right to maintain his
82 or her own system and is exempt from contractor registration
83 requirements for performing construction, maintenance, or
84 repairs on the system but is subject to all permitting
85 requirements.
86 3. A septic tank contractor licensed under part III of
87 chapter 489, if approved by the manufacturer, may not be denied
88 access by the manufacturer to aerobic treatment unit system
89 training or spare parts for maintenance entities. After the
90 original warranty period, component parts for an aerobic
91 treatment unit system may be replaced with parts that meet
92 manufacturer's specifications but are manufactured by others.
93 The maintenance entity shall maintain documentation of the
94 substitute part's equivalency for 2 years and shall provide such
95 documentation to the department upon request.

96 4. The owner of an aerobic treatment unit system shall
97 obtain a system operating permit from the department and allow
98 the department to inspect during reasonable hours each aerobic
99 treatment unit system at least annually, and such inspection may
100 include collection and analysis of system-effluent samples for
101 performance criteria established by rule of the department.
102 5. Nothing in this paragraph shall prohibit a septic tank
103 contractor licensed under part III of chapter 489, from
104 performing maintenance or repair on the drainfield of an aerobic
105 treatment unit system provided that it is not a performance-
106 based treatment system.
107
108
109
110 ---
111 **T I T L E A M E N D M E N T**
112 Remove line 27 of the amendment and insert:
113 amending s. 381.0065, F.S.; providing that under certain
114 situations a licensed septic tank contractor may perform
115 maintenance or repair on the drainfield of an aerobic treatment
116 unit system; amending s. 381.00655, F.S.; allowing the owner of
117 an existing
118

CS/CS/HB 1123

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1123 Aquatic Preserves
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Porter
TIED BILLS: None **IDEN./SIM. BILLS:** CS/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	12 Y, 0 N, As CS	Helpling	Massengale
3) State Affairs Committee		Kaiser	Camechis

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.

The bill provides spending authority for 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

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[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

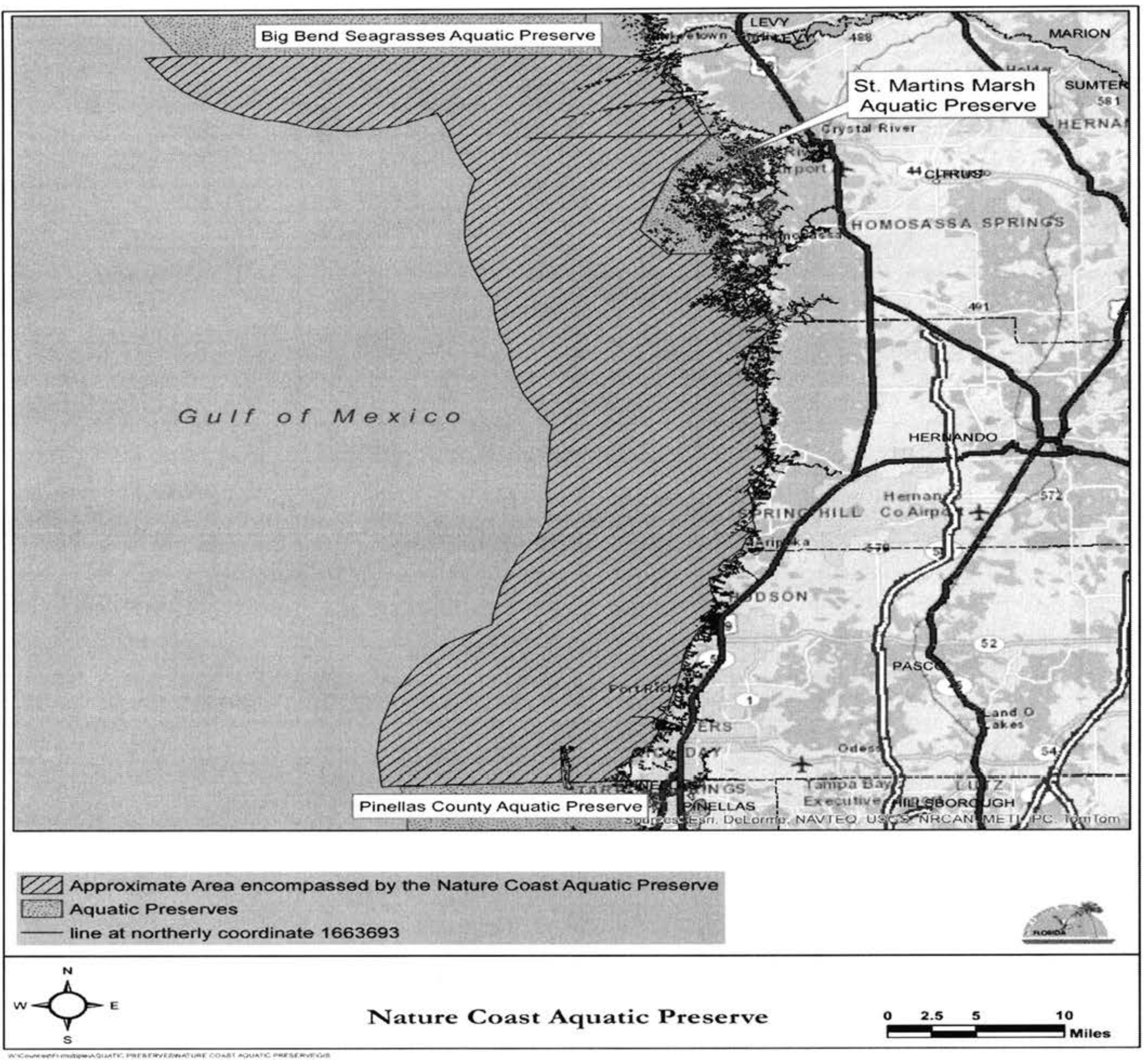
"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla).[12] This area is a sanctuary for 19 endangered species[13] and has many natural resources, including mangroves, spring 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 spending authority and authorization of additional positions.

Section 3: 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.

   The bill provides spending authority for two additional staff and associated expenses for maintenance and management of the preserve.

   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:

None.

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.

On March 31, 2014, the Agriculture and Natural Resources Appropriations Subcommittee reported CS/HB 1123 favorably as a committee substitute. There was one amendment, which provides spending authority for two positions and associated expenses required for management and maintenance of the preserve.

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

1 A bill to be entitled
2 An act relating to aquatic preserves; creating s.
3 258.3991, F.S.; creating the Nature Coast Aquatic
4 Preserve; designating the preserve for inclusion in
5 the aquatic preserve system; describing the boundaries
6 of the preserve; outlining the authority of the Board
7 of Trustees of the Internal Improvement Trust Fund in
8 respect to the preserve; requiring the board to adopt
9 rules to carry out this section; prohibiting the
10 establishment and management of the preserve from
11 infringing upon the riparian rights of upland property
12 owners adjacent to or within the preserve; providing
13 for enforcement and applicability; providing
14 appropriations and authorizing positions; providing an
15 effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Section 258.3991, Florida Statutes, is created
20 to read:
21 258.3991 Nature Coast Aquatic Preserve.—
22 (1) DESIGNATION.—The following described area in Pasco,
23 Hernando, and Citrus Counties is designated by the Legislature
24 for inclusion in the aquatic preserve system under the Florida
25 Aquatic Preserve Act of 1975 and shall be known as the "Nature
26 Coast Aquatic Preserve." It is the intent of the Legislature

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

27 that the Nature Coast Aquatic Preserve be preserved in an
28 essentially natural condition so that its biological and
29 aesthetic value may endure for the enjoyment of future
30 generations.
31 (2) BOUNDARIES.—
32 (a) For the purpose of this section, the Nature Coast
33 Aquatic Preserve consists of the state-owned submerged lands
34 lying west of the west right-of-way line of U.S. Highway 19
35 within the boundaries of Pasco County, as described in s. 7.51,
36 Hernando County, as described in s. 7.27, and Citrus County, as
37 described in s. 7.09, to the south boundary of St. Martins Marsh
38 Aquatic Preserve, as described in s. 258.39(20), and the
39 westerly projection thereof, and also including all the state-
40 owned submerged lands within Citrus County lying west of the
41 west boundary of St. Martins Marsh Aquatic Preserve, lying north
42 of the westerly projection of the south boundary of St. Martins
43 Marsh Aquatic Preserve, and lying south of a line extending
44 westerly along northerly coordinate 1663693 feet, Florida West
45 Zone (NAD83).
46 (b) The Nature Coast Aquatic Preserve includes the
47 submerged bottom lands, the water column upon such lands, and
48 all publicly owned islands within the boundaries of the
49 preserve. Any privately owned upland within the boundaries of
50 the preserve is excluded. However, the board may negotiate an
51 arrangement with the owner of any privately owned upland by
52 which such upland may be included in the preserve.

53 (3) AUTHORITY OF TRUSTEES.—The board shall maintain the
54 Nature Coast Aquatic Preserve subject to the following:
55 (a) Further sale, transfer, or lease of sovereignty
56 submerged lands in the preserve may not be approved or
57 consummated by the board, except upon a showing of extreme
58 hardship on the part of the applicant and a determination by the
59 board that such sale, transfer, or lease is in the public
60 interest.
61 (b) Further dredging or filling of submerged lands of the
62 preserve may not be approved by the board except:
63 1. Minimum dredging and spoiling of submerged lands may be
64 authorized for existing public navigation projects, as a public
65 necessity, or for preservation of the preserve according to the
66 expressed intent of this section.
67 2. Other alteration of the physical conditions of
68 submerged lands, including the placement of riprap, may be
69 authorized as necessary to enhance the quality and utility of
70 the preserve.
71 3. Minimum dredging and filling of submerged lands may be
72 authorized for the creation and maintenance of marinas, piers,
73 or docks and the maintenance of existing attendant navigation
74 channels and access roads. Such projects may be authorized only
75 upon a specific finding by the board that there is assurance
76 that the project will be constructed and operated in a manner
77 that will not adversely affect the water quality and utility of
78 the preserve. This subparagraph does not authorize the

79 connection of upland canals to the waters of the preserve.
80 4. Dredging of submerged lands may be authorized if the
81 board determines that such dredging is necessary for eliminating
82 conditions hazardous to the public health or for eliminating
83 stagnant waters, islands, and spoil banks and that such dredging
84 would enhance the aesthetic and environmental quality and
85 utility of the preserve and is clearly in the public interest as
86 determined by the board.
87 (c) Before approving any dredging or filling as provided
88 in paragraph (b), the board must give public notice of such
89 dredging or filling as required under s. 253.115.
90 (d) There may not be any drilling of wells, excavation for
91 shell or minerals, or erection of structures other than docks
92 within the preserve unless such activity is associated with an
93 activity that is authorized under this section.
94 (e) The board may not approve any seaward relocation of
95 bulkhead lines or further establishment of bulkhead lines except
96 when a proposed bulkhead line is located at the line of mean
97 high water along the shoreline. Construction, replacement, or
98 relocation of a seawall is prohibited without the approval of
99 the board, which may be granted only if riprap construction is
100 used in the seawall. The board may grant approval under this
101 paragraph by a letter of consent.
102 (f) Notwithstanding other provisions of this section, the
103 board may, for lands lying within the Nature Coast Aquatic
104 Preserve:

105 1. Enter into agreements for and establish lines
106 delineating sovereignty lands and privately owned lands.
107 2. Enter into agreements for the exchange of, and
108 exchange, sovereignty lands for privately owned lands.
109 3. Accept gifts of land within or contiguous to the
110 preserve.
111 4. Negotiate or enter into agreements with owners of lands
112 contiguous to public lands for any public or private use of such
113 lands.
114 5. Take any action convenient for, or necessary to, the
115 accomplishment of any of the acts and matters authorized under
116 this paragraph.
117 6. Conduct restoration and enhancement efforts in the
118 preserve and its tributaries.
119 7. Stabilize eroding shorelines of the preserve and its
120 tributaries which are contributing to turbidity by planting
121 natural vegetation to the greatest extent feasible and by the
122 placement of riprap, as determined by Pasco, Hernando, and
123 Citrus Counties in conjunction with the Department of
124 Environmental Protection.
125 (4) RULES.—
126 (a) The board shall adopt and enforce reasonable rules to
127 carry out this section and to provide:
128 1. Additional preserve management criteria as necessary to
129 accommodate special circumstances.
130 2. Regulation of human activity within the preserve in

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

131 such a manner as not to interfere unreasonably with lawful and
132 traditional public uses of the preserve, such as sport fishing,
133 commercial fishing, boating, and swimming.
134 (b) Other uses of the preserve or human activity within
135 the preserve, although not originally contemplated, may be
136 authorized by the board, but only subsequent to a formal finding
137 of compatibility with the purposes of this section.
138 (5) RIPARIAN RIGHTS.—The establishment or the management
139 of the Nature Coast Aquatic Preserve may not operate to infringe
140 upon the riparian rights of upland property owners adjacent to
141 or within the preserve. Reasonable improvement for ingress and
142 egress, mosquito control, shore protection, public utility
143 expansion, and similar purposes may be authorized by the board
144 or the Department of Environmental Protection, subject to any
145 other applicable laws under the jurisdiction of other agencies.
146 However, before approving any such improvements, the board or
147 the department must give public notice as required under s.
148 253.115.
149 (6) ENFORCEMENT.—This section may be enforced in
150 accordance with s. 403.412. In addition, the Department of Legal
151 Affairs may bring an action for civil penalties of $5,000 per
152 day against a person as defined in s. 1.01 who violates this
153 section or any rule or regulation issued hereunder.
154 (7) APPLICABILITY.—This section is subject to the "Florida
155 Electrical Power Plant Siting Act" as described in ss. 403.501-
156 403.518.

157 Section 2. For the 2014-2015 fiscal year, the sums of
158 $130,689 in recurring funds and $1,800 in nonrecurring funds are
159 appropriated from the Land Acquisition Trust Fund to the
160 Department of Environmental Protection, and two full-time
161 equivalent positions with associated salary rate of 71,939 are
162 authorized, for the purpose of managing and maintaining the
163 Nature Coast Aquatic Preserve.
164 Section 3. This act shall take effect July 1, 2014.

CS/HB 1363

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1363 Vessel Safety
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Van Zant
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1594

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

SUMMARY ANALYSIS

Current law prohibits a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel. The Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers and other law enforcement officers are authorized to remove, but not relocate, vessels deemed to be an interference or hazard to public safety. However, current law does not authorize the recovery of costs associated with the removal of such vessels. FWC and its officers and all law enforcement officers are authorized to remove, but not relocate, abandoned or derelict vessels from public waters, including where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. All costs incurred by FWC or another law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions. Any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

The bill defines "gross negligence" to mean that the defendant's conduct was so wreckless or wanting in care that it constituted a conscious disregard or indifference to the safety of the property exposed to such conduct. The bill also defines "willful misconduct" to mean conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

The bill amends the vessel safety statutes to authorize FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC or any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel, unless the damage results from gross negligence or willful misconduct. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover such costs.

The bill also amends the public nuisance and pollutant discharge statutes to specify that, in addition to being authorized to remove a derelict vessel, FWC, an officer of FWC, and certain law enforcement agencies or officers are authorized to relocate or cause to be relocated a derelict vessel from public waters. The bill also exempts FWC or a law enforcement agency from liability for damages caused by the relocation or removal of a derelict vessel authorized by the bill, unless the damage results from gross negligence or willful misconduct. In addition, the bill authorizes FWC or other law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, incurred by FWC or other law enforcement agency for relocating a derelict vessel, and specifies that all third-party costs that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel can be recovered from the vessel owner.

The bill has an insignificant positive fiscal impact on state and local governments that perform the removal or relocation of a derelict vessel because under the bill, the state and local law enforcement will be able to recover all costs incurred in the removal or relocation of certain vessels.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 327, F.S., contains various provisions pertaining to vessel safety in Florida; chapter 376, F.S., contains various provisions pertaining to pollutant discharge in Florida, which applies to abandoned and derelict vessels on public waters; and chapter 823, F.S., contains various provisions pertaining to public nuisance law in the state, which apply to derelict vessels that obstruct or threaten to obstruct navigation or poses a threat to the environment.

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The vessel safety statutes prohibit a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel.[1] A "vessel" is defined as being synonymous with boat as referenced in Article VII, Section 1(b) of the Florida Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water used or capable of being used as a means of transportation on the water.[2]

The Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers[3] are authorized to *remove* vessels deemed to be an interference or hazard to public safety.[4] Current law does not authorize the recovery of costs associated with the removal of such vessels.

In addition, the statutes do not authorize the FWC or other law enforcement agencies to *relocate* and attempt to secure a vessel in a more appropriate location if the vessel creates a navigational hazard or that interfere with other vessels. An unoccupied vessel may break free of its anchor or mooring and either remain adrift, come to rest in a location that is unsafe for other vessel traffic, or cause damage to other boats or maritime infrastructure. Relocating the vessel would benefit the boat owner, the operators and owners of boats in the area, and the owners of maritime infrastructure.[5]

Derelict Vessels

Florida's public nuisance statutes define a "derelict vessel" as any vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of the state;[6]

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[1] Section 327.44, F.S.
[2] Section 327.02(39), F.S.
[3] Pursuant to s. 943.10, F.S., a law enforcement officer is "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency."
[4] Section 327.70(1), F.S.
[5] FWC Agency Analysis on file with staff.
[6] Section 823.11(1)(a), F.S.

- At any port in the state without the consent of the agency having jurisdiction of the port;[7] or
- Docked or grounded at or beached upon the property of another without the consent of the owner of the property.[8]

It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel in Florida, and it is a first degree misdemeanor[9] to do so.[10] In addition, anyone who stores, leaves, or abandons a derelict vessel is subject to a fine of up to $50,000 per day.[11] A criminal conviction does not prevent the assessment of a civil penalty[12] and gives the court in charge of a criminal derelict vessel proceeding the power to impose a civil penalty.[13]

The FWC and its officers and all law enforcement officers are authorized to remove, but not relocate, an abandoned or derelict vessel from public waters where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment.[14] All costs incurred by FWC or other law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions.[15] In addition, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.[16]

Pursuant to s. 376.15(2), FWC and its officers and all law enforcement officers are authorized to *remove* any derelict vessel from public waters *at any time,* as long as the vessel meets the definition of derelict vessel, discussed above.[17] FWC or other law enforcement agencies are authorized to recover from the vessel owner all costs from the removal of any abandoned or derelict vessel.[18] The Department of Legal Affairs is required to represent FWC. According to FWC,[19] this statute is broader in scope than s. 823.11, F.S., which only allows for the removal of a derelict vessel from public waters in any instance when the vessel threatens to, or obstructs, navigation or in any way constitutes a danger to the environment.

According to FWC,[20] the removal of a derelict vessel costs an average of $350 to $450 per foot of vessel length. However, there are many variables that affect the costs of removing an individual vessel. Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average. On the other hand, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at much lower cost. Relocation may have no cost if a law enforcement officer is able to tow it to a suitable location. If professional towing services are called upon, costs in the neighborhood of $200 per hour with a one-hour minimum (from the time the tow boat leaves their dock to the time they return) are standard. According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments. Those local governments spent approximately $325,000 on the removal of derelict vessels, resulting in an average of $3,533 per vessel.

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[7] Section 823.11(1)(b), F.S.
[8] Section 823.11(1)(c), F.S.
[9] A first degree misdemeanor is punishable by up to one year in jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[10] Sections 823.11(4) and 376.15(1), F.S.
[11] Sections 376.15 and 376.16, F.S.
[12] *See* s. 376.16, F.S. This statute also gives the Department of Environmental Protection independent power to assess a civil penalty of up to $50,000 per violation per day for storing, leaving, or abandoning a derelict vessel in Florida.
[13] Section 823.11(4), F.S.
[14] Section 823.11(2), F.S.
[15] Section 823.11(3), F.S.
[16] Section 823.11(3)(a), F.S.
[17] Section 376.15(2), F.S. *See also* FWC Agency Analysis on file with staff.
[18] Section 376.15(2), F.S.
[19] FWC 2014 Agency Analysis on file with staff.
[20] FWC 2014 Agency Analysis on file with staff.

Effect of Proposed Changes

Definition of "gross negligence" and "willful misconduct"

The bill provides a definition of gross negligence and willful misconduct in ss 327.44, 376.15, and 823.11, F.S. The bill defines "gross negligence" to mean that the defendant's conduct was so wreckless or wanting in care that it constituted a conscious disregard or indifference to the safety of the property exposed to such conduct. The bill also defines "willful misconduct" to mean conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The bill amends s. 327.44, F.S., authorizing FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel, unless the damage results from gross negligence or willful misconduct. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover the costs.

Derelict Vessels

The bill amends s. 376.15, F.S., clarifying that the term "commission" means the Fish and Wildlife Conservation Commission. The bill specifies that, in addition to being authorized to *remove a derelict vessel* from public waters, FWC and certain law enforcement officers are authorized to *relocate* any derelict vessel from public waters. The bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of any abandoned or derelict vessel. The bill exempts FWC and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a derelict vessel from public waters, unless the damage results from gross negligence or willful misconduct.

The bill amends s. 823.11, F.S., to specify that, in addition to being authorized to *remove* a derelict vessel, FWC, an officer of FWC, and certain law enforcement agencies or officers are authorized to *relocate*, or cause to be relocated, a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or poses a danger to the environment, property or persons (current law allows removal of a derelict vessel that poses a danger to the environment). The bill also exempts FWC or any other law enforcement agency from liability for damages caused by such relocation or removal of a derelict vessel, unless the damage results from gross negligence or willful misconduct. In addition, the bill authorizes the recovery from the vessel owner of all costs incurred by FWC or another law enforcement agency for relocating a derelict vessel, and authorizes the recovery from the vessel owner of all costs owed to a third party that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.44, F.S., relating to vessel interference with navigation.

Section 2. Amends s. 823.11, F.S., relating to the relocation and removal of derelict vessels.

Section 3. Amends s. 376.15, F.S., relating to the removal of derelict vessels from public waters.

Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill may have an insignificant positive fiscal impact on FWC because, if a vessel must be removed or relocated, the bill requires the owner of a vessel to pay all costs incurred by the FWC in the removal or relocation.

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 may have an insignificant positive fiscal impact on local governments that remove or relocate certain vessels because the bill requires the owner of the vessel to pay all costs incurred in the removal or relocation of the vessel.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Vessel owners will be liable for all costs incurred by the FWC or a law enforcement agency and any third party costs associated with relocating or removing a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.

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:

- Provides definitions for "gross negligence" and "willful misconduct";
- Limits the liability protection in the bill to damages to certain vessels not caused by gross negligence or willful misconduct;
- Adds "officer" to the entities covered by the liability protection in s. 823.11, F.S.;
- Clarifies "commission" to mean the Fish and Wildlife Conservation Commission; and
- Adds a section to the bill, amending s. 376.15, F.S., authorizing FWC and law enforcement to relocate any abandoned or derelict vessel on public waters.

1 A bill to be entitled
2 An act relating to vessel safety; amending s. 327.44,
3 F.S.; authorizing the Fish and Wildlife Conservation
4 Commission and certain law enforcement agencies or
5 officers to relocate or remove vessels that
6 unreasonably or unnecessarily constitute a navigation
7 hazard or interfere with another vessel; exempting the
8 commission or a law enforcement agency or officer from
9 liability for damages to a derelict vessel caused by
10 the relocation or removal of such a vessel under
11 certain circumstances; providing definitions;
12 providing that the commission or a law enforcement
13 agency may recover from the vessel owner its costs for
14 the relocation or removal of such a vessel; requiring
15 the Department of Legal Affairs to represent the
16 commission in actions to recover such costs; amending
17 s. 823.11, F.S.; providing definitions; authorizing
18 the commission and certain law enforcement agencies
19 and officers to relocate or remove a derelict vessel
20 from public waters if such vessel poses a danger to
21 property or persons; exempting the commission or a law
22 enforcement agency or officer from liability for
23 damages caused by its relocation or removal of such a
24 vessel under certain circumstances; expanding costs
25 recoverable by the commission or a law enforcement
26 agency against the owner of a derelict vessel for the

27 relocation or removal of such vessel; abrogating the
28 power of the commission to remove certain abandoned
29 vessels and recover its costs therefor; providing
30 definitions; amending s. 376.15, F.S.; providing a
31 definition; authorizing relocation of derelict
32 vessels; exempting the commission or a law enforcement
33 agency or officer from liability for damages caused by
34 its relocation or removal of such a vessel under
35 certain circumstances; defining the terms "gross
36 negligence" and "willful misconduct"; providing an
37 effective date.
38
39 Be It Enacted by the Legislature of the State of Florida:
40
41 Section 1. Section 327.44, Florida Statutes, is amended to
42 read:
43 327.44 Interference with navigation; relocation or
44 removal; recovery of costs.—
45 (1) No person shall anchor, operate, or permit to be
46 anchored, except in case of emergency, or operated a vessel or
47 carry on any prohibited activity in a manner which shall
48 unreasonably or unnecessarily constitute a navigational hazard
49 or interfere with another vessel. Anchoring under bridges or in
50 or adjacent to heavily traveled channels shall constitute
51 interference if unreasonable under the prevailing circumstances.
52 (2) The commission, an officer of the commission, and any

53 law enforcement agency or officer specified in s. 327.70 is
54 authorized and empowered to relocate, remove, or cause to be
55 relocated or removed a vessel that unreasonably or unnecessarily
56 constitutes a navigational hazard or interferes with another
57 vessel. The commission or any other law enforcement agency or
58 officer acting under this subsection to relocate, remove, or
59 cause to be relocated or removed a vessel that unreasonably or
60 unnecessarily constitutes a navigational hazard or interferes
61 with another vessel shall be held harmless for all damages to
62 the vessel resulting from such relocation or removal, unless the
63 damage results from gross negligence or willful misconduct. As
64 used in this subsection, the term:
65 (a) "Gross negligence" means that the defendant's conduct
66 was so reckless or wanting in care that it constituted a
67 conscious disregard or indifference to the safety of the
68 property exposed to such conduct.
69 (b) "Willful misconduct" means conduct evidencing
70 carelessness or negligence of such a degree or recurrence as to
71 manifest culpability, wrongful intent, or evil design or to show
72 an intentional and substantial disregard of the interests of the
73 vessel owner.
74 (3) All costs, including costs owed to a third party,
75 incurred by the commission or other law enforcement agency in
76 the relocation or removal of a vessel that unreasonably or
77 unnecessarily constitutes a navigational hazard or interferes
78 with another vessel are recoverable against the vessel owner.

79 The Department of Legal Affairs shall represent the commission
80 in actions to recover such costs.
81 Section 2. Section 823.11, Florida Statutes, is amended to
82 read:
83 823.11 ~~Abandoned and~~ Derelict vessels; relocation or
84 removal; penalty.—
85 (1) As used in this section, the term:
86 (a) "Derelict vessel" means a ~~any~~ vessel, as defined in s.
87 327.02, that is left, stored, or abandoned:
88 1.~~(a)~~ In a wrecked, junked, or substantially dismantled
89 condition upon any public waters of this state.
90 2.~~(b)~~ At a ~~any~~ port in this state without the consent of
91 the agency having jurisdiction thereof.
92 3.~~(c)~~ Docked, ~~or~~ grounded, ~~at~~ or beached upon the property
93 of another without the consent of the owner of the property.
94 (b) "Commission" means the Fish and Wildlife Conservation
95 Commission.
96 (2) It is unlawful for a ~~any~~ person, firm, or corporation
97 to store, leave, or abandon any derelict vessel ~~as defined in~~
98 ~~this section~~ in this state.
99 (3)~~(a)~~ The ~~Fish and Wildlife Conservation~~ commission, an
100 officer of the commission, ~~and its officers~~ and any ~~all~~ law
101 enforcement agency or officer ~~officers as~~ specified in s. 327.70
102 is ~~are~~ authorized and empowered to relocate, remove, or cause to
103 be relocated or removed a ~~any abandoned or~~ derelict vessel from
104 public waters if the derelict vessel ~~in any instance when the~~

105 ~~same~~ obstructs or threatens to obstruct navigation or in any way
106 constitutes a danger to the environment, property, or persons.
107 The commission or any other law enforcement agency or officer
108 acting under this subsection to relocate, remove, or cause to be
109 relocated or removed a derelict vessel from public waters shall
110 be held harmless for all damages to the derelict vessel
111 resulting from such relocation or removal, unless the damage
112 results from gross negligence or willful misconduct.
113 (a) Removal of derelict vessels under ~~pursuant to~~ this
114 subsection ~~section~~ may be funded by grants provided in ss.
115 206.606 and 376.15. The Fish and Wildlife Conservation
116 Commission shall ~~is directed to~~ implement a plan for the
117 procurement of any available federal disaster funds and ~~to~~ use
118 such funds for the removal of derelict vessels.
119 (b) All costs, including costs owed to a third party,
120 incurred by the commission or other law enforcement agency in
121 the relocation or removal of a ~~any abandoned or~~ derelict vessel
122 are ~~as set out above shall be~~ recoverable against the vessel
123 owner ~~thereof~~. The Department of Legal Affairs shall represent
124 the commission in ~~such~~ actions to recover such costs. As
125 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
126 to pay such costs may ~~amount is~~ not ~~entitled to~~ be issued a
127 certificate of registration for such vessel or for any other
128 vessel or motor vehicle until such ~~the~~ costs have been paid.
129 (c) As used in this subsection, the term:
130 1. "Gross negligence" means that the defendant's conduct

131 was so reckless or wanting in care that it constituted a
132 conscious disregard or indifference to the safety of the
133 property exposed to such conduct.
134 2. "Willful misconduct" means conduct evidencing
135 carelessness or negligence of such a degree or recurrence as to
136 manifest culpability, wrongful intent, or evil design or to show
137 an intentional and substantial disregard of the interests of the
138 vessel owner.
139 (4)~~(b)~~ When a derelict vessel is docked, ~~or~~ grounded, ~~at~~
140 or beached upon private property without the consent of the
141 owner of the property, the owner of the property may remove the
142 vessel at the vessel owner's expense 60 days after compliance
143 with the notice requirements specified in s. 328.17(5). The
144 private property owner may not hinder reasonable efforts by the
145 vessel owner or the vessel owner's agent to remove the vessel.
146 ~~Any~~ Notice given pursuant to this subsection is ~~paragraph shall~~
147 ~~be~~ presumed to be delivered when it is deposited with the United
148 States Postal Service, certified, and properly addressed with
149 prepaid postage.
150 (5)~~(4)~~ A ~~Any~~ person, firm, or corporation violating this
151 section ~~act~~ commits a misdemeanor of the first degree and shall
152 be punished as provided by law. A conviction under this section
153 does ~~shall~~ not bar the assessment and collection of the civil
154 penalty provided in s. 376.16 for violation of s. 376.15. The
155 court having jurisdiction over the criminal offense,
156 notwithstanding any jurisdictional limitations on the amount in

157 controversy, may order the imposition of such civil penalty in
158 addition to any sentence imposed for the first criminal offense.
159 Section 3. Section 376.15, Florida Statutes, is amended to
160 read
161 376.15 Derelict vessels; relocation or removal from public
162 waters.—
163 (1) As used in this section, the term "commission" means
164 the Fish and Wildlife Conservation Commission.
165 (2) ~~(1)~~ It is unlawful for any person, firm, or corporation
166 to store, leave, or abandon any derelict vessel as defined in s.
167 823.11(1) in this state.
168 (3) ~~(2)~~ (a) The ~~Fish and Wildlife Conservation~~ commission
169 and its officers and all law enforcement officers as specified
170 in s. 327.70 are authorized and empowered to relocate or remove
171 any derelict vessel as defined in s. 823.11(1) from public
172 waters. All costs, including costs owed to a third party,
173 incurred by the commission or other law enforcement agency in
174 the relocation or removal of any abandoned or derelict vessel
175 shall be recoverable against the owner of the vessel. The
176 Department of Legal Affairs shall represent the commission in
177 such actions.
178 (b) The commission and any other law enforcement agency or
179 officer as specified in s. 327.70 acting under this section to
180 relocate, remove, or cause to be relocated or removed a derelict
181 vessel from public waters shall be held harmless for all damages
182 to the derelict vessel resulting from such relocation or

183 removal, unless the damage results from gross negligence or
184 willful misconduct. As used in this paragraph, the term:
185 1. "Gross negligence" means that the defendant's conduct
186 was so reckless or wanting in care that it constituted a
187 conscious disregard or indifference to the safety of the
188 property exposed to such conduct.
189 2. "Willful misconduct" means conduct evidencing
190 carelessness or negligence of such a degree or recurrence as to
191 manifest culpability, wrongful intent, or evil design or to show
192 an intentional and substantial disregard of the interests of the
193 vessel owner.
194 (c) ~~(b)~~ The commission may establish a program to provide
195 grants to local governments for the removal of derelict vessels
196 from the public waters of the state. The program shall be funded
197 from the Florida Coastal Protection Trust Fund. Notwithstanding
198 the provisions in s. 216.181(11), funds available for grants may
199 only be authorized by appropriations acts of the Legislature.
200 (d) ~~(c)~~ The commission shall adopt by rule procedures for
201 submitting a grant application and criteria for allocating
202 available funds. Such criteria shall include, but not be limited
203 to, the following:
204 1. The number of derelict vessels within the jurisdiction
205 of the applicant.
206 2. The threat posed by such vessels to public health or
207 safety, the environment, navigation, or the aesthetic condition
208 of the general vicinity.

209 3. The degree of commitment of the local government to
210 maintain waters free of abandoned and derelict vessels and to
211 seek legal action against those who abandon vessels in the
212 waters of the state.
213 (e) ~~(d)~~ This section shall constitute the authority for
214 such removal but is not intended to be in contravention of any
215 applicable federal act.
216 Section 4. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Van Zant offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 327.44, Florida Statutes, is amended to
7 read:
8 327.44 Interference with navigation; relocation or
9 removal; recovery of costs.—
10 (1) As used in this section, the term:
11 (a) "Gross negligence" means conduct so reckless or
12 wanting in care that it constitutes a conscious disregard or
13 indifference to the safety of the property exposed to such
14 conduct.
15 (b) "Willful misconduct" means conduct evidencing
16 carelessness or negligence of such a degree or recurrence as to
17 manifest culpability, wrongful intent, or evil design or to show

18 an intentional and substantial disregard of the interests of the
19 vessel owner.
20 (2) No person shall anchor, operate, or permit to be
21 anchored, except in case of emergency, or operated a vessel or
22 carry on any prohibited activity in a manner which shall
23 unreasonably or unnecessarily constitute a navigational hazard
24 or interfere with another vessel. Anchoring under bridges or in
25 or adjacent to heavily traveled channels shall constitute
26 interference if unreasonable under the prevailing circumstances.
27 (3) The commission, officers of the commission, and any
28 law enforcement agency or officer specified in s. 327.70 are
29 authorized and empowered to relocate, remove, or cause to be
30 relocated or removed a vessel that unreasonably or unnecessarily
31 constitutes a navigational hazard or interferes with another
32 vessel. The commission, officers of the commission, or any other
33 law enforcement agency or officer acting under this subsection
34 to relocate, remove, or cause to be relocated or removed a
35 vessel that unreasonably or unnecessarily constitutes a
36 navigational hazard or interferes with another vessel shall be
37 held harmless for all damages to the vessel resulting from such
38 relocation or removal unless the damage results from gross
39 negligence or willful misconduct.
40 (4) A contractor performing relocation or removal
41 activities at the direction of the commission, officers of the
42 commission, or a law enforcement agency or officer pursuant to
43 this section must be licensed in accordance with applicable

44 United States Coast Guard regulations where required; obtain and
45 carry in full force and effect a policy from a licensed
46 insurance carrier in this state to insure against any accident,
47 loss, injury, property damage, or other casualty caused by or
48 resulting from the contractor's actions; and be properly
49 equipped to perform the services to be provided.
50 (5) All costs, including costs owed to a third party,
51 incurred by the commission or other law enforcement agency in
52 the relocation or removal of a vessel that unreasonably or
53 unnecessarily constitutes a navigational hazard or interferes
54 with another vessel are recoverable against the vessel owner.
55 The Department of Legal Affairs shall represent the commission
56 in actions to recover such costs.
57 Section 2. Section 376.15, Florida Statutes, is amended to
58 read:
59 376.15 Derelict vessels; relocation or removal from public
60 waters.—
61 (1) As used in this section, the term:
62 (a) "Commission" means the Fish and Wildlife Conservation
63 Commission.
64 (b) "Gross negligence" means conduct so reckless or
65 wanting in care that it constitutes a conscious disregard or
66 indifference to the safety of the property exposed to such
67 conduct.
68 (c) "Willful misconduct" means conduct evidencing
69 carelessness or negligence of such a degree or recurrence as to

70 manifest culpability, wrongful intent, or evil design or to show
71 an intentional and substantial disregard of the interests of the
72 vessel owner.
73 (2) ~~(1)~~ It is unlawful for any person, firm, or corporation
74 to store, leave, or abandon any derelict vessel as defined in s.
75 823.11 ~~823.11(1)~~ in this state.
76 (3) ~~(2)~~(a) The ~~Fish and Wildlife Conservation~~ commission,
77 ~~and its~~ officers of the commission, and any ~~all~~ law enforcement
78 agency or officer ~~officers as~~ specified in s. 327.70 are
79 authorized and empowered to relocate, remove, or cause to be
80 relocated or removed any derelict vessel as defined in s. 823.11
81 ~~823.11(1)~~ from public waters. All costs, including costs owed to
82 a third party, incurred by the commission or other law
83 enforcement agency in the relocation or removal of any abandoned
84 or derelict vessel are ~~shall be~~ recoverable against the owner of
85 the vessel. The Department of Legal Affairs shall represent the
86 commission in ~~such~~ actions to recover such costs.
87 (b) The commission, officers of the commission, and any
88 other law enforcement agency or officer specified in s. 327.70
89 acting under this section to relocate, remove, or cause to be
90 relocated or removed a derelict vessel from public waters shall
91 be held harmless for all damages to the derelict vessel
92 resulting from such relocation or removal unless the damage
93 results from gross negligence or willful misconduct.
94 (c) A contractor performing relocation or removal
95 activities at the direction of the commission, officers of the

96 commission, or a law enforcement agency or officer pursuant to
97 this section must be licensed in accordance with applicable
98 United States Coast Guard regulations where required; obtain and
99 carry in full force and effect a policy from a licensed
100 insurance carrier in this state to insure against any accident,
101 loss, injury, property damage, or other casualty caused by or
102 resulting from the contractor's actions; and be properly
103 equipped to perform the services to be provided.
104 (d) ~~(b)~~ The commission may establish a program to provide
105 grants to local governments for the removal of derelict vessels
106 from the public waters of the state. The program shall be funded
107 from the Florida Coastal Protection Trust Fund. Notwithstanding
108 the provisions in s. 216.181(11), funds available for grants may
109 only be authorized by appropriations acts of the Legislature.
110 (e) ~~(c)~~ The commission shall adopt by rule procedures for
111 submitting a grant application and criteria for allocating
112 available funds. Such criteria shall include, but not be limited
113 to, the following:
114 1. The number of derelict vessels within the jurisdiction
115 of the applicant.
116 2. The threat posed by such vessels to public health or
117 safety, the environment, navigation, or the aesthetic condition
118 of the general vicinity.
119 3. The degree of commitment of the local government to
120 maintain waters free of abandoned and derelict vessels and to
121 seek legal action against those who abandon vessels in the

122 waters of the state.

123 (f) ~~(d)~~ This section constitutes ~~shall constitute~~ the
124 authority for such removal but is not intended to be in
125 contravention of any applicable federal act.

126 Section 3. Section 823.11, Florida Statutes, is amended to
127 read:

128 823.11 ~~Abandoned and~~ Derelict vessels; relocation or
129 removal; penalty.—

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

131 (a) "Commission" means the Fish and Wildlife Conservation
132 Commission.

133 (b) "Derelict vessel" means a ~~any~~ vessel, as defined in s.
134 327.02, that is left, stored, or abandoned:

135 1. ~~(a)~~ In a wrecked, junked, or substantially dismantled
136 condition upon any public waters of this state.

137 2. ~~(b)~~ At a ~~any~~ port in this state without the consent of
138 the agency having jurisdiction thereof.

139 3. ~~(c)~~ Docked, ~~or~~ grounded, ~~at~~ or beached upon the property
140 of another without the consent of the owner of the property.

141 (c) "Gross negligence" means conduct so reckless or
142 wanting in care that it constitutes a conscious disregard or
143 indifference to the safety of the property exposed to such
144 conduct.

145 (d) "Willful misconduct" means conduct evidencing
146 carelessness or negligence of such a degree or recurrence as to
147 manifest culpability, wrongful intent, or evil design or to show

148 an intentional and substantial disregard of the interests of the
149 vessel owner.
150 (2) It is unlawful for a ~~any~~ person, firm, or corporation
151 to store, leave, or abandon any derelict vessel ~~as defined in~~
152 ~~this section~~ in this state.
153 (3)~~(a)~~ The ~~Fish and Wildlife Conservation~~ commission, ~~and~~
154 ~~its~~ officers of the commission, and any ~~all~~ law enforcement
155 agency or officer ~~officers as~~ specified in s. 327.70 are
156 authorized and empowered to relocate, remove, or cause to be
157 relocated or removed a ~~any abandoned or~~ derelict vessel from
158 public waters if the derelict vessel ~~in any instance when the~~
159 ~~same~~ obstructs or threatens to obstruct navigation or in any way
160 constitutes a danger to the environment, property, or persons.
161 The commission, officers of the commission, or any other law
162 enforcement agency or officer acting under this subsection to
163 relocate, remove, or cause to be relocated or removed a derelict
164 vessel from public waters shall be held harmless for all damages
165 to the derelict vessel resulting from such relocation or removal
166 unless the damage results from gross negligence or willful
167 misconduct.
168 (a) Removal of derelict vessels under ~~pursuant to~~ this
169 subsection ~~section~~ may be funded by grants provided in ss.
170 206.606 and 376.15. The ~~Fish and Wildlife Conservation~~
171 commission shall ~~is directed to~~ implement a plan for the
172 procurement of any available federal disaster funds and ~~to~~ use
173 such funds for the removal of derelict vessels.

174 (b) All costs, including costs owed to a third party,
175 incurred by the commission or other law enforcement agency in
176 the relocation or removal of a ~~any abandoned or~~ derelict vessel
177 are ~~as set out above shall be~~ recoverable against the vessel
178 owner ~~thereof~~. The Department of Legal Affairs shall represent
179 the commission in ~~such~~ actions to recover such costs. As
180 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
181 to pay such costs may ~~amount is~~ not ~~entitled to~~ be issued a
182 certificate of registration for such vessel or for any other
183 vessel or motor vehicle until such ~~the~~ costs have been paid.
184 (c) A contractor performing relocation or removal
185 activities at the direction of the commission, officers of the
186 commission, or a law enforcement agency or officer pursuant to
187 this section must be licensed in accordance with applicable
188 United States Coast Guard regulations where required; obtain and
189 carry in full force and effect a policy from a licensed
190 insurance carrier in this state to insure against any accident,
191 loss, injury, property damage, or other casualty caused by or
192 resulting from the contractor's actions; and be properly
193 equipped to perform the services to be provided.
194 (4)~~(b)~~ When a derelict vessel is docked, ~~or~~ grounded, ~~at~~
195 or beached upon private property without the consent of the
196 owner of the property, the owner of the property may remove the
197 vessel at the vessel owner's expense 60 days after compliance
198 with the notice requirements specified in s. 328.17(5). The
199 private property owner may not hinder reasonable efforts by the

200 vessel owner or the vessel owner's agent to remove the vessel.
201 ~~Any~~ Notice given pursuant to this subsection is ~~paragraph shall~~
202 ~~be~~ presumed to be delivered when it is deposited with the United
203 States Postal Service, certified, and properly addressed with
204 prepaid postage.
205 (5) ~~(4)~~ A ~~Any~~ person, firm, or corporation violating this
206 section ~~act~~ commits a misdemeanor of the first degree and shall
207 be punished as provided by law. A conviction under this section
208 does ~~shall~~ not bar the assessment and collection of the civil
209 penalty provided in s. 376.16 for violation of s. 376.15. The
210 court having jurisdiction over the criminal offense,
211 notwithstanding any jurisdictional limitations on the amount in
212 controversy, may order the imposition of such civil penalty in
213 addition to any sentence imposed for the first criminal offense.
214 Section 4. Paragraph (g) of subsection (4) of section
215 376.11, Florida Statutes, is amended to read:
216 376.11 Florida Coastal Protection Trust Fund.—
217 (4) Moneys in the Florida Coastal Protection Trust Fund
218 shall be disbursed for the following purposes and no others:
219 (g) The funding of a grant program to local governments,
220 pursuant to s. 376.15(3)(d) and (e) ~~376.15(2)(b) and (c)~~, for
221 the removal of derelict vessels from the public waters of the
222 state.
223 Section 5. Subsection (3) of section 705.101, Florida
224 Statutes, is amended to read:
225 705.101 Definitions.—As used in this chapter:

226 (3) "Abandoned property" means all tangible personal
227 property that does not have an identifiable owner and that has
228 been disposed on public property in a wrecked, inoperative, or
229 partially dismantled condition or has no apparent intrinsic
230 value to the rightful owner. The term includes derelict vessels
231 as defined in s. 823.11 ~~823.11(1)~~.
232 Section 6. This act shall take effect July 1, 2014.
233
234 ---
235 **T I T L E A M E N D M E N T**
236 Remove everything before the enacting clause and insert:
237 A bill to be entitled
238 An act relating to vessel safety; amending s. 327.44,
239 F.S.; defining terms; authorizing the Fish and
240 Wildlife Conservation Commission and certain law
241 enforcement agencies or officers to relocate or remove
242 vessels that unreasonably or unnecessarily constitute
243 a navigational hazard or interfere with another
244 vessel; exempting the commission or a law enforcement
245 agency or officer from liability for damages to such a
246 vessel caused by the relocation or removal thereof;
247 providing an exception; specifying requirements for
248 contractors relocating or removing a vessel at the
249 direction of the commission or a law enforcement
250 agency or officer; providing that the commission or a
251 law enforcement agency may recover from the vessel

252 owner its costs for the relocation or removal of such
253 a vessel; requiring the Department of Legal Affairs to
254 represent the commission in actions to recover such
255 costs; amending ss. 376.15 and 823.11, F.S.; defining
256 terms; authorizing the commission and certain law
257 enforcement agencies and officers to relocate or
258 remove a derelict vessel from public waters; exempting
259 the commission or a law enforcement agency or officer
260 from liability for damages to such a vessel caused by
261 the relocation or removal thereof; providing an
262 exception; expanding costs recoverable by the
263 commission or a law enforcement agency against the
264 owner of a derelict vessel for the relocation or
265 removal thereof; specifying requirements for
266 contractors relocating or removing a vessel at the
267 direction of the commission or a law enforcement
268 agency or officer; abrogating the power of the
269 commission to remove certain abandoned vessels and
270 recover its costs therefor; conforming a cross-
271 reference; amending ss. 376.11 and 705.101, F.S.;
272 conforming cross-references; providing an effective
273 date.

HB 1399

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1399 Hillsborough County Aviation Authority, Hillsborough County
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N	Kelly	Rojas
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The Hillsborough County Aviation Authority (Aviation Authority) was created in 1945. The Aviation Authority is an independent special district that has exclusive jurisdiction and management over all airports in Hillsborough County, except those owned by private parties. The Authority's airports include Tampa International Airport and three general aviation airports: Peter O. Knight Airport in Davis Islands, Plant City Airport in Plant City, and Tampa Executive (formerly Vandenberg Airport) in Tampa.

Current law requires all Authority purchases of construction, improvements, repairs, equipment, supplies, materials, services, or work of any nature to be done through a competitive bidding process if the entire cost or value of the purchase exceeds $30,000.

The bill increases the Aviation Authority's competitive bidding threshold from $30,000 to $100,000. Thus, contracts for purchases with a total cost or value exceeding $100,000 must be competitively bid.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Hillsborough County Aviation Authority (Aviation Authority) was created in 1945 by ch. 23339, L.O.F. The numerous special acts relating to the Authority are codified in ch. 2012-234, L.O.F. The Aviation Authority is an independent special district that has exclusive jurisdiction and management over all airports in Hillsborough County, except those owned by private parties. The Authority's airports include Tampa International Airport and three general aviation airports: Peter O. Knight Airport in Davis Islands, Plant City Airport in Plant City, and Tampa Executive (formerly Vandenberg Airport) in Tampa. The Aviation Authority is one of four large hub airports in the state,[1] which classification is determined by the FAA based on the number of passenger boardings each year.[2]

The Authority is authorized and required to advertise for sealed bids and other competitive selection processes as required by law.[3] Current law requires all Authority purchases of construction, improvements, repairs, equipment, supplies, materials, services, or work of any nature to be done through a competitive bidding process if the entire cost or value of the purchase exceeds $30,000.[4] The law provides exemptions to the competitive bidding requirement for certain types of purchases, such as purchases of a highly specialized good or service, emergency purchases, and purchases of professional services.[5]

Competitive procurement thresholds for airports vary widely throughout the state as airports are structured differently and governed by different laws. Some airports, such as Miami, are county entities and are thus subject to their respective county's procurement laws. Other airports, such as Tampa, are governed by local authorities. Orlando, like the Aviation Authority, is an independent special district. Currently, Orlando's competitive procurement threshold is set at $250,000.[6]

Effect of Proposed Changes

The bill amends ch. 2012-234, L.O.F., to increase the Aviation Authority's competitive bidding threshold from $30,000 to $100,000. Thus, contracts for purchases with a total cost or value exceeding $100,000 must be competitively bid. This increased threshold will streamline the procurement process because the Aviation Authority will be able to efficiently procure contracts for goods and services totaling $100,000 or less.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2012-234, L.O.F., to increase the threshold for the award of contracts by the Hillsborough County Aviation Authority from $30,000 to $100,000.

Section 2: Provides an effective date.

---

[1] The other three airports are Miami, Ft. Lauderdale, and Orlando.
[2] *See* http://www.faa.gov/ airports/planning_capacity/passenger_allcargo_stats/categories/.
[3] Ch. 2012-234, Section 6(1)(d), L.O.F.
[4] Ch. 2012-234, Section 11(1)(a), L.O.F.
[5] *Id.*
[6] Miami and Ft. Lauderdale have procurement thresholds ranging from $250,000-$1 million.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 24, 2014

WHERE? *The Times*, a daily newspaper of general circulation, published in Hillsborough County, Florida.

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

IF YES, WHEN? Not applicable.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to the Hillsborough County Aviation
3 Authority, Hillsborough County; amending chapter 2012-
4 234, Laws of Florida; increasing the threshold for the
5 award of contracts by the governing body of the
6 authority which are exempt from certain competitive
7 procurement requirements; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (a) of subsection (1) of section 11
12 of section 3 of chapter 2012-234, Laws of Florida, is amended to
13 read:
14 Section 11. Award of contracts.—
15 (1)(a) All Authority purchases of construction,
16 improvements, repairs, equipment, supplies, materials, services,
17 or work of any nature, where the entire cost or value exceeds
18 $100,000 ~~$30,000~~, shall be done only under contract or contracts
19 approved and awarded by the Authority with the lowest responsive
20 and qualified responsible bidder, respondent, or proposer, upon
21 proper terms, after advertisement has been given asking for
22 competitive bids, responses, or proposals, provided that the
23 Authority may reject any and all bids, responses, or proposals.
24 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1441 Key Largo Wastewater Treatment District, Monroe County
SPONSOR(S): Raschein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

HB 1441 amends ch. 2002-337, L.O.F., as amended, to allow the Key Largo Wastewater Treatment District (District) to establish a special lower rate for the residential accounts of customers at least 60 years old or disabled American veterans who meet certain low-income standards to be adopted by the District.

The monthly base facility charge of $33.60 would most likely be reduced or waived for these customers. If completely waived, the District will lose $130,636.80 annually. This loss would be absorbed by the other customers whose base facility charge will increase by $14.62 annually.

This bill takes effect upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Key Largo Wastewater Treatment District

The Key Largo Wastewater Treatment District (District) is an independent special district in unincorporated Monroe County. The District was created in 2002[1] to develop, operate, and maintain a state-mandated wastewater management system to serve the more than 14,400 residents. It is governed by a five-member elected board. The District performs wastewater treatment to control nutrient levels of nearshore surface waters in certain areas of the Upper Keys. District boundaries include the territory consisting of Key Largo, including all lands east of Tavernier Creek, including Tavernier, Key Largo, and Cross Key, with the exception of Ocean Reef.

Service Charges[2] and Cost of Living

The base facility charge is $33.60 per month for each customer, regardless of usage. This covers fixed costs and overhead. The monthly volumetric charge is $5.27 per 1,000 gallons.[3] The District charges a flat fee of $44.14 per month for alternative water supply (cisterns) wastewater services.

The responsibility for financing the construction, operation, and maintenance of the District's wastewater management facilities has fallen, to a very large extent, on the homeowners, businesses, and property owners in the area served by the District. Because funding was not available when the sewer system was built, Key Largo residents pay at least $1200 more per EDU[4] than similar systems elsewhere in Florida or in the Florida Keys.

When adjusted for cost of living,[5] the median household income in Key Largo is $41,110 while that of Florida as a whole is $49,740.[6] The higher cost of living in Key Largo is primarily due to the high cost of housing.

Standardized Measure of Affordability

Water affordability is a nationwide concern. The federal Environmental Protection Agency imposes water mandates that can impose significant financial costs on households and businesses. To relieve some of this economic stress in the face of water mandates, EPA developed affordability criteria to indicate when these mandates would cause substantial and widespread economic distress in the community. This is measured by a two-step screening process.[7]

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[1] Chapter 2002-337, L.O.F., pursuant to the provisions of ch. 189, F.S., the "Uniform Special District Accountability Act of 1989."
[2] Key Largo Wastewater Treatment District Resolution Number 16-10-10, available at http://www.klwtd.com/index.php?option=com_jdownloads&Itemid=127&view=finish&cid=7276&catid=537
[3] For a residential customer, the maximum monthly volume for which the monthly volumetric charge will be charged is 12,000 gallons, which is $63.24.
[4] Equivalent Domestic Unit. One EDU is equivalent to one single-family home.
[5] Cost of living indices come from Sperling's Best Places, available at http://www.bestplaces.net. The cost of living index is 126 for Key Largo and 96 for the state as a whole.
[6] The medium household income is $51,798 for Key Largo and $47,827 for the state as a whole. Figures were provided by Ray Giglio, counsel for the Key Largo Wastewater Treatment District.
[7] *Assessing the Affordability of Federal Water Mandates: An Issue Brief*, U.S. Conference of Mayors, American Water Works Association, and Water Environment Federation, available at http://www.awwa.org/Portals/0/files/resources/water%20utility%20management/affordability/Affordability-IssueBrief.pdf.

The preliminary screen examines affordability using a factor called the Residential Indicator (RI). The RI weighs the average per household cost of wastewater bills relative to median household income in the service area. Ultimately, an RI of 2 percent or greater is deemed to signal a "large economic impact" on residents, meaning that the community is likely to experience economic hardship in complying with federal water quality standards. The secondary screen examines the financial capability of the community.

The preliminary screening tool shows that wastewater assessments and rates result in a RI of over 2 percent for most of the Florida Keys. When the median household income is adjusted for cost-of-living, Key Largo has an RI of 2.5 percent. Therefore, the sewer charges have had a "large economic impact" on residents of Key Largo.

Table 1. EPA Preliminary Affordability Screen Adapted for Cost of Living

Area	Median Household Income	Cost of Living Index	Comparable Median Household Income	Total Cost per Household	Residential Indicator (RI)
Monroe County	$53,889	139	$38,769	$1,272	3.3%
Marathon	$49,633	130	$38,179	$1,246	3.3%
Key Colony Beach	$50,250	138	$36,413	$1,056	2.9%
Islamorada	$66,708	136	$49,050	$1,359	2.8%
Layton	$52,292	114	$45,870	$1,232	2.7%
Key Largo	$51,798	126	$41,110	$1,033	2.5%
Key West	$51,385	141	$36,443	$610	1.7%
Florida	$47,827	96	$49,740	$592	1.2%

Disproportionate Impact on Low-income Residents

The large economic impact creates an excessive financial burden that disproportionately affects low-income residents. Monthly sewer charges add to the cost burden already faced by local property owners, renters, and businesses – especially those at the low end of the income scale.

According to the Economic Impact Statement, 324 senior citizens or disabled American veteran customers qualify as low-income. This accounts for 3.5 percent of all current customers. The District collects $130,636.80 in base facility charges from these 324 customers annually.

Effect of Proposed Changes

HB 1441 amends ch. 2002-337, L.O.F., as amended, to allow the District to establish a special lower rate for the residential accounts of persons 60 years of age or older or disabled American veterans if the customer meets certain low-income standards to be adopted by the board.

Proponents argue that this is a measure of fundamental fairness as customers cannot change their base fee by restricting their water usage.

However, if a low-income rate is established, the District will lose revenue which will be absorbed by the other customers. The District has approximately 9,257 customers, of which 8,933 are not considered low-income elderly or disabled veterans. If the monthly base facility charge is completely waived for these low-income customers, the rate of the other customers will increase by $14.62 per year (or $1.22 per month).

The District supports the bill and does not expect additional administrative fees as the Florida Keys Aqueduct Authority, which does the District's billing, already has these capabilities.

This bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 4 of s. 1 of ch. 2002-337, L.O.F., as amended, relating to the Key Largo Wastewater Treatment District.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 31, 2014

WHERE? *The Reporter*, a weekly newspaper published in the Upper Keys, Monroe County.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to the Key Largo Wastewater Treatment
3 District, Monroe County; amending chapter 2002-337,
4 Laws of Florida, as amended; providing that the
5 district is authorized to prescribe, fix, and
6 establish a special lower rate, fee, rental, or other
7 charge on the residential account of any person who is
8 60 years of age or older or a disabled American
9 veteran meeting low income standards; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Paragraph (r) is added to subsection (2) of
15 section 4 of section 1 of chapter 2002-337, Laws of Florida, as
16 amended, to read:
17 Section 4. District powers, functions, and duties.—
18 (2) The District is hereby authorized and empowered:
19 (r) To prescribe, fix, and establish a special lower rate,
20 fee, rental, or other charge on the residential account of any
21 person who is 60 years of age or older or a disabled American
22 veteran and meets the low income and other standards adopted by
23 the board in accordance with the administrative procedures
24 adopted by the board.
25 Section 2. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1441 (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 ______

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Raschein offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line 25 and insert:
6 Section 2. This act shall be subject to referendum
7 approval of the qualified electors of the Key Largo Wastewater
8 Treatment District.
9
10
11
12
13 ---
14 **T I T L E A M E N D M E N T**
15 Remove lines 9-10 and insert:

16 veteran meeting low income standards; requiring referendum
17 approval of the qualified electors of the Key Largo Wastewater
18 Treatment District.
19

HB 7093

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7093 PCB ANRS 14-02 Rehabilitation of Petroleum Contamination Sites
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Moore	Blalock
1) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Helpling	Massengale
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water. The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems.

In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems. The SUPER Act led to the creation of the Petroleum Restoration Program (Restoration Program), which establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup. The SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the Preapproval Program, which requires all state-funded site rehabilitation to be preapproved by the Department and based on templated costs.

As of February 2014, there are approximately 17,300 sites eligible for state funding. Of these, approximately 7,300 have been rehabilitated and closed, approximately 3,100 are currently undergoing some phase of rehabilitation, and approximately 6,900 await rehabilitation.

The general procurement laws of the state regulate state agency competitive solicitation of commodities and services. Without an explicit exemption, the Department is required to comply with these laws when procuring contracts for petroleum rehabilitation tasks. In addition, the law directs the Department to adopt rules governing procurement for pollution response action contracts, which include petroleum site rehabilitation contracts.

The bill repeals the Preapproval Program and relocates certain provisions that continue to be necessary. Thus, the Department will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department. Although it appears the Department was already required to competitively bid rehabilitation projects, the bill emphasizes that all work must now be procured through a competitive process. The bill requires the Department's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation or perform site rehabilitation work.

The bill also repeals the reimbursement program, which has been obsolete since 1996, and changes the name of the Preapproved Advanced Cleanup program to the Advanced Cleanup program.

The bill does not appear to have a direct fiscal impact on state government, local governments, or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.[1] These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.[2] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.[3]

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[4] The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.[5] The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[6] These levels are known as Cleanup Target Levels (CTLs).[7] Once the CTLs for a contaminated site[8] have been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[9]

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately $300,000, but some sites may cost millions of dollars to rehabilitate.[10] Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[11] Over the years, different eligibility programs have been implemented to provide state financial assistance to

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[1] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 1 (2002).
[2] *Id.*
[3] *Id.*
[4] Chapter 83-310, L.O.F.
[5] Chapter 86-159, L.O.F.
[6] Section 376.3071(5)(b)3., F.S.
[7] *Id.*
[8] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries. DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 2 (2012).
[9] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 24 (2002).
[10] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 26 (2002).
[11] Section 376.308, F.S.

certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amountsof state-funded site restoration coverage[12]
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996[13]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[14] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008

[12] The PLRIP initially provided $1M worth of site restoration coverage to eligible sites. In 1994, the state began phasing out the Department's participation in the restoration insurance program by reducing the amount of restoration coverage provided. For discharges reported from January 1, 1994, to December 31, 1996, coverage was limited to $300,000. For discharges reported from January 1, 1997, to December 31, 1998, coverage was limited to $150,000. Section 376.3072(2)(d)2.c.-d., F.S. In 2008, the Legislature raised the coverage for all PLRIP sites as follows: sites with $1M in coverage were raised to $1.2M, sites with $300,000 in coverage were raised to $400,000, and sites with $150,000 in coverage were raised to $300,000. Chapter 2008-127, s. 3, at 6, L.O.F.

[13] The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

[14] The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
Consent Order (aka "Hardship" or "Indigent") s. 376.3071(7)(c), F.S.	This program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of February 2014, there are approximately 17,300 sites eligible for state funding through one of the above programs. Of these, approximately 7,300 have been rehabilitated and closed, approximately 3,100 are currently undergoing some phase of rehabilitation, and approximately 6,900 await rehabilitation.

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[15] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[16] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[17] Each year, approximately $200 million is deposited into the IPTF, and about $125 million is available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[18] Sites currently in the Restoration Program range in score from five to 115 points, with a score of 115 representing a substantial threat and a score of five representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[19] The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget.[20] Currently, the threshold is set at 46 points.

Preapproval Program

When enacted in 1986, the SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.[21] However, the reimbursement program proved to be costly and resulted in a backlog of unpaid claims amounting to $551.5 million.[22]

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the current Preapproval Program, which requires all state-funded site rehabilitation to be conducted on a

[15] Section 376.3071(3)-(4), F.S.
[16] Sections 206.9935(3) and 376.3071(6), F.S.
[17] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[18] Chapter 62-771.100, F.A.C.
[19] Chapter 62-771.300, F.A.C.
[20] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 19-20 (2012).
[21] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 2 (2002).
[22] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CONTAMINATION CLEANUP AND DISCHARGE PREVENTION PROGRAMS 17 (2012).

preapproved basis.[23] Thus, contractors may only be paid for site rehabilitation tasks if the scope of work was approved in writing by the Department before the work was conducted.[24] The legislation also directed the Department to adopt uniform scopes of work with templated labor and equipment costs to establish the type of work and expenditures that are allowed for preapproved site rehabilitation tasks.[25]

The Preapproval Program is not an eligibility program that allows a site to receive state funding for rehabilitation. Rather, it is the process the Department uses to conduct site rehabilitation. All sites in the Preapproval Program must qualify for state rehabilitation funding through one of the eligibility programs previously described in Table 1.

Contractor Selection

Under the Preapproval Program, a site owner or responsible party may select any contractor to conduct the rehabilitation of a site as long as the contractor:

- Meets all certification and license requirements imposed by law;
- Complies with applicable Occupational Safety and Health Administration regulations;
- Maintains workers' compensation insurance for all employees;
- Maintains comprehensive general and automobile liability insurance;
- Maintains professional liability insurance;
- Has submitted a sworn statement on public entity crimes; and
- Has the capacity to perform or supervise the majority of the work at a site.[26]

If a site owner or responsible party does not select a contractor by filling out a Contractor Designation Form (CDF), the Department assigns a state contractor to conduct rehabilitation of the site.[27] A site owner or responsible party may submit a new CDF designating a new contractor at any time, but may not switch contractors more than twice in any 12-month period.[28]

Determining Rehabilitation Costs

There are three existing methods for developing a cost estimate for rehabilitation tasks: 1) fixed-cost templates, 2) time and materials, and 3) performance-based cleanup.

Fixed-Cost Templates

Pursuant to the law, the Department developed fixed costs for many common petroleum rehabilitation expenses.[29] Maximum compensation schedules were established to set fixed prices for commonly used non-labor items, such as lab analyses and equipment rentals.[30] The Department also created fixed cost templates that outline the fixed prices for packaged equipment kits and defined scopes of work.[31] These templated costs are based on fixed rates for labor and the maximum compensation schedules.[32] The fixed template amounts are paid to the contractor regardless of the actual cost of the work as long as the specified item was provided or scope of work was completed.[33] If a contractor wishes to increase the scope of work after a work order has been executed, he or she must provide justification for the extra work.[34] The extra work must be approved by the Department before the

[23] Chapter 96-277, s. 5, L.O.F.
[24] *Id.*
[25] *Id.*
[26] Section 376.30711(2)(c), F.S.
[27] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 24 (2012).
[28] *Id.* at 25.
[29] Section 376.3071(2)(e), F.S.
[30] *Id.* at 50.
[31] *Id.*
[32] *Id.* at 69
[33] *Id.* at 52.
[34] *Id.*

contractor commences work.[35] A reduction in the scope of work does not have to be preapproved and is instead handled when an invoice is submitted after completion of the work.[36]

Time and Materials

Time and materials estimating is used only for scopes of work for which there are no fixed cost templates.[37] This method is commonly used for more complex rehabilitation work, such as remedial action constructions and deep well installations.[38] Under this method, costs for specific scopes of work are determined using the same standardized labor and equipment rates that the Department uses to determine the fixed cost templates.[39]

Performance-Based Cleanup

Contractors who develop cost proposals using the fixed-cost template or time and materials approach are paid as long as the work outlined in the work order is completed, regardless of whether the work actually reduces the site's level of contamination.[40] In contrast, payment for work completed under the performance-based cleanup (PBC) approach is based upon measured progress toward reaching the rehabilitation goal.[41] Under this method, a contractor guarantees complete rehabilitation of a site for a price agreed upon by the Department and the contractor.[42] Contractors are not required to pursue rehabilitation using PBC, but are encouraged to do so for sites having certain factors that make them suitable for PBC.[43]

Subcontractor Selection and Cost

Contractors may hire subcontractors to provide certain services or products for rehabilitation of a site, so long as the subcontractors meet the same requirements listed above for contractors under "Contractor Selection." For services or products that are not covered by the fixed-cost templates or the maximum compensation schedule, prices for subcontractor work must be provided by the contractor in the proposal.[44] If the subcontractor cost is equal to or greater than $2,500, three written quotes are required.[45] The contractor must select the lowest bidder to complete the work unless there is good cause for not giving the work to that bidder, such as prior poor performance.[46] For costs less than $2,500, only one written quote is required.[47] To account for the time and effort required to obtain a subcontractor, a contractor receives a fee, which is included in the total cost of the contract with the Department, that is equal to 10 percent of the subcontractor cost.[48]

Expediting Site Rehabilitation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Preapproved Advanced Cleanup and Low Scored Site Initiative.

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[35] *Id.*
[36] *Id.*
[37] *Id.* at 56.
[38] *Id.* at 57.
[39] *Id.* at 69.
[40] *Id.* at 59.
[41] *Id.*
[42] *Id.*
[43] *Id.* at 60.
[44] *Id.* at 75.
[45] *Id.* at 76.
[46] *Id.* at 78.
[47] *Id.* at 76.
[48] *Id.* at 53.

Preapproved Advanced Cleanup

Preapproved Advanced Cleanup (PAC) was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.[49] The purpose of PAC was to facilitate property transactions or public works projects on contaminated sites.[50] To participate in PAC, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).[51]

To apply for PAC, a site owner or responsible party must bid a cost share of the total site rehabilitation.[52] The cost share must be at least 25 percent of the total cost of rehabilitation.[53] For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.[54] In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[55] Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.[56] The Department may enter into PAC contracts for a total of up to $15 million per fiscal year,[57] and no more than $5 million per fiscal year may be preapproved for rehabilitation work at an individual facility.[58]

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in the program, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.[59]

An assessment is conducted to determine whether the above criteria are met.[60] The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[61]

[49] Section 376.30713(1), F.S.
[50] *Id.*
[51] For PCPP sites, PAC is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[52] Section 376.30713(2)(a), F.S.
[53] *Id.*
[54] Section 376.30713(1)(d)-(2)(a), F.S.
[55] Section 376.30713(2)(a), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[56] Section 376.30713(2)(b), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[57] Section 376.30713(4), F.S.
[58] A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.
[59] Section 376.3071(11)(b)1., F.S.
[60] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).
[61] *Id.* at 3.

Funding for LSSI is limited to $10 million per fiscal year, which may only be used to fund site assessments.[62] Each site has a funding cap of $30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.[63] Funds are allocated on a first-come, first-served basis.[64] Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.[65]

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.[66]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.[67]
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.[68]

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.[69] LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the $30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.[70] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Procurement

Chapter 287, F.S., regulates state agency[71] procurement of commodities and services. Without an explicit exemption, the Department is required to comply with this chapter when procuring contracts for petroleum rehabilitation tasks.

Depending on the cost and characteristics of the needed goods or services, agencies may use a variety of procurement methods, including:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and

[62] Section 376.3071(11)(b)3.c., F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.* at 1-2.
[66] Section 376.3071(11)(b)2., F.S.
[67] *Id.*
[68] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).
[69] *Id.* at 11.
[70] *Id.*
[71] Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.[72]

For contracts for commodities or services in excess of $35,000, agencies must use a competitive solicitation process.[73] Competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."[74] Certain contractual services and commodities are not subject to competitive solicitation requirements.[75]

In addition, s. 287.0595, F.S., directs the Department to adopt rules governing procurement for pollution response action contracts. The term "response action" includes any activity performed to rehabilitate a petroleum-contaminated site.[76] In the rules, the Department must establish procedures for:

- Determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors;
- Awarding such contracts to the lowest responsible and responsive vendor,[77] as well as procedures to be followed in cases in which the Department declares a valid emergency to exist that would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor;
- Payment of contracts;
- Negotiating contracts, modifying contract documents, and establishing terms and conditions of contracts.[78]

Inspector General Review

In 2012, during a review of the Department's divisions, districts, and programs, questions arose concerning the effectiveness and efficiency of the Restoration Program. As a result, Secretary Herschel T. Vinyard, Jr., requested that his Inspector General review the Restoration Program and identify areas needing improvement. In a memo to Secretary Vinyard, the Inspector General identified the current contractor selection process as one such area. Specifically, the Inspector General stated:

> The structure of the current program allows for the site owner/responsible party to designate the remediation contractor for their site. As long as the Department funds costs for work that can be easily manipulated and changed by outside parties, program funds are exposed to risk of waste or elevated costs. If the Department controlled the process of bid solicitation and designation of contractors, the opportunity for contractor manipulation would be greatly reduced.

2013 Legislation

For the 2013-14 fiscal year, the Legislature appropriated $125 million to the Restoration Program. Due in part to the concerns raised in the Inspector General's memo, however, that appropriation was limited by Specific Appropriation 1668 of the Fiscal Year 2013-14 General Appropriations Act in Senate Bill 1500 (proviso) and Section 29 of Senate Bill 1502 (implementing bill). The proviso appropriated up to $50 million, available immediately, to the Department to fund payments for preapproved task assignments, contracts, and work orders approved by the Department before June 30, 2013, or to

[72] Section 287.057, F.S.
[73] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid.
[74] Section 287.012(6), F.S.
[75] Section 287.057(3)(f), F.S.
[76] *See* ss. 287.0595(1)(b) and 376.301(39), F.S.
[77] A "responsible vendor" is defined as "a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S. A "responsive vendor" is defined as "a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.
[78] Section 287.0595(1), F.S.

address an imminent environmental threat. The remaining $75 million was placed in reserve until the Department submitted a plan to the Legislative Budget Commission (LBC) detailing how the Department would improve the effectiveness and efficiency of the Restoration Program. The plan was required to include a strategy for developing a competitive procurement process for selecting rehabilitation contractors pursuant to chapter 287, F.S. The implementing bill stipulated that after June 30, 2013, the Department could only enter into contracts that had been competitively procured. In addition, the proviso prohibited the funds in reserve from being released after January 1, 2014, unless the Department had adopted rules to implement the competitive procurement process.

On September 12, 2013, the Department presented its plan to improve the Restoration Program's effectiveness and efficiency to the LBC. In the plan, the Department indicated an intent to:

- Implement competitive procurement procedures by developing a pool of qualified contractors through an invitation to negotiate process consistent with ss. 287.056, 287.057, and 287.0595, F.S.;
- Create performance expectations for the contractors and procedures for evaluating their performance on an ongoing basis; and
- Reduce costs by ending its practice of purchasing rehabilitation equipment.

The LBC approved the plan unanimously.

To further comply with the proviso, the Department initiated rulemaking. On October 4, 2013, the Department filed a Notice of Proposed Rule in the Florida Administrative Register. The rules were filed for adoption with the Secretary of State on December 27, 2013. Some of the rules became effective on January 16, 2014, but two of the rules require ratification by the Legislature before they can become effective.[79]

Effect of Proposed Changes

The bill repeals s. 376.30711, F.S., which establishes the Preapproval Program, and relocates certain provisions that continue to be necessary. Thus, the Department will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department under s. 376.3071, F.S., or s. 287.0595, F.S. Although the Department was already required to competitively bid rehabilitation projects, the bill emphasizes that all work must now be procured through a competitive process.

The bill requires the Department's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation for site rehabilitation work. The rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation, as well as requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

In addition, the bill repeals s. 376.3071(12), F.S., which establishes the reimbursement program. The reimbursement program has been obsolete since 1996.

Lastly, the bill changes the name of the Preapproved Advanced Cleanup program to the Advanced Cleanup program.

B. SECTION DIRECTORY:

Section 1 amends s. 376.301, F.S., conforming cross references.

Section 2 amends s. 376.302, F.S., conforming cross references.

[79] The two rules requiring legislative ratification are chapters 62-772.300 and 62-772.400, F.A.C.

Section 3 amends s. 376.305, F.S., conforming cross references.

Section 4 amends s. 376.3071, F.S., requiring petroleum site rehabilitation work to be competitively procured; repealing an obsolete reimbursement program.

Section 5 repeals s. 376.30711, F.S., relating to preapproved petroleum site rehabilitation.

Section 6 amends s. 376.30713, F.S., changing program name; conforming cross references.

Section 7 amends s. 376.30714, F.S., conforming cross references.

Section 8 amends s. 376.3072, F.S., conforming cross references.

Section 9 amends s. 376.3073, F.S., conforming cross references.

Section 10 amends s. 376.3075, F.S., conforming cross references.

Section 11 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill's modifications of the cleanup program will not impact Inland Protection Trust Fund revenues or how the Legislature appropriates those funds.

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

None.

1 A bill to be entitled
2 An act relating to rehabilitation of petroleum
3 contamination sites; amending s. 376.3071, F.S.;
4 providing legislative findings and intent regarding
5 the Petroleum Restoration Program and the
6 rehabilitation of contamination sites; providing
7 requirements for site rehabilitation contracts and
8 procedures for payment of rehabilitation work under
9 the Petroleum Restoration Program; providing
10 applicability of funding under the Early Detection
11 Incentive Program; deleting obsolete provisions
12 relating to reimbursement for certain cleanup
13 expenses; repealing s. 376.30711, F.S., relating to
14 preapproved site rehabilitation; amending ss. 376.301,
15 376.302, 376.305, 376.30713, 376.30714, 376.3072,
16 376.3073, and 376.3075, F.S.; conforming provisions to
17 changes made by the act; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 376.3071, Florida Statutes, is amended
22 to read:
23 376.3071 Inland Protection Trust Fund; creation; purposes;
24 funding.—
25 (1) FINDINGS.—In addition to the legislative findings set
26 forth in s. 376.30, the Legislature finds and declares:

27 (a) That significant quantities of petroleum and petroleum
28 products are being stored in storage systems in this state,
29 which is a hazardous undertaking.
30 (b) That spills, leaks, and other discharges from such
31 storage systems have occurred, are occurring, and will continue
32 to occur and that such discharges pose a significant threat to
33 the quality of the groundwaters and inland surface waters of
34 this state.
35 (c) That, where contamination of the ground or surface
36 water has occurred, remedial measures have often been delayed
37 for long periods while determinations as to liability and the
38 extent of liability are made and that such delays result in the
39 continuation and intensification of the threat to the public
40 health, safety, and welfare; in greater damage to <u>water</u>
41 <u>resources and</u> the environment; and in significantly higher costs
42 to contain and remove the contamination.
43 (d) That adequate financial resources must be readily
44 available to provide for the expeditious supply of safe and
45 reliable alternative sources of potable water to affected
46 persons and to provide a means for investigation and cleanup of
47 contamination sites without delay.
48 (e) That it is necessary to fulfill the intent and
49 purposes of ss. 376.30-376.317~~,~~ and ~~further it is hereby~~
50 determined to be in the best interest of, and necessary for the
51 protection of the public health, safety, and ~~general~~ welfare of
52 the residents of this state, and therefore a paramount public

53 purpose, to provide for the creation of a nonprofit public
54 benefit corporation as an instrumentality of the state to assist
55 in financing the functions provided in ss. 376.30-376.317 and to
56 authorize the department to enter into one or more service
57 contracts with such corporation for the purpose ~~provision~~ of
58 financing services related to such functions and to make
59 payments thereunder from the amount on deposit in the Inland
60 Protection Trust Fund, subject to annual appropriation by the
61 Legislature.
62 (f) That to achieve the purposes established in paragraph
63 (e) and in order to facilitate the expeditious handling and
64 rehabilitation of contamination sites and remedial measures with
65 respect to contamination sites ~~provided hereby~~ without delay, it
66 is in the best interests of the residents of this state to
67 authorize such corporation to issue evidences of indebtedness
68 payable from amounts paid by the department under any such
69 service contract entered into between the department and such
70 corporation.
71 (g) That the Petroleum Restoration Program must be
72 implemented in a manner that reduces costs and improves the
73 efficiency of rehabilitation activities to reduce the
74 significant backlog of contaminated sites eligible for state-
75 funded rehabilitation and the corresponding threat to the public
76 health, safety, and welfare, water resources, and the
77 environment.
78 (2) INTENT AND PURPOSE.—

79 (a) It is the intent of the Legislature to establish the
80 Inland Protection Trust Fund to serve as a repository for funds
81 which will enable the department to respond without delay to
82 incidents of inland contamination related to the storage of
83 petroleum and petroleum products in order to protect the public
84 health, safety, and welfare and to minimize environmental
85 damage.
86 (b) It is the intent of the Legislature that the
87 department implement rules and procedures to improve the
88 efficiency of the Petroleum Restoration Program. The department
89 is directed to implement rules and policies to eliminate and
90 reduce duplication of site rehabilitation efforts, paperwork,
91 and documentation, and micromanagement of site rehabilitation
92 tasks.
93 (c) It is the intent of the Legislature that
94 rehabilitation of contamination sites be conducted with emphasis
95 on first addressing the sites that pose the greatest threat to
96 the public health, safety, and welfare, water resources, and the
97 environment, within the availability of funds in the Inland
98 Protection Trust Fund, recognizing that source removal, wherever
99 it is technologically feasible and cost-effective, will
100 significantly reduce contamination or eliminate the spread of
101 contamination and will protect the public health, safety, and
102 welfare, water resources, and the environment.
103 (d) ~~(c)~~ The department is directed to adopt and implement
104 uniform and standardized forms for ~~the requests for preapproval~~

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105 site rehabilitation work and for the submittal of reports to
106 ensure that information is submitted to the department in a
107 concise, standardized uniform format seeking only information
108 that is necessary.
109 <u>(e)</u> ~~(d)~~ The department is directed to implement
110 computerized and electronic filing capabilities ~~of preapproval~~
111 ~~requests~~ and submittal of reports in order to expedite submittal
112 of the information and elimination of delay in paperwork. ~~The~~
113 ~~computerized, electronic filing system shall be implemented no~~
114 ~~later than January 1, 1997.~~
115 ~~(e) The department is directed to adopt uniform scopes of~~
116 ~~work with templated labor and equipment costs to provide~~
117 ~~definitive guidance as to the type of work and authorized~~
118 ~~expenditures that will be allowed for preapproved site~~
119 ~~rehabilitation tasks.~~
120 (f) The department is directed to establish guidelines for
121 consideration and acceptance of new and innovative technologies
122 for site rehabilitation work.
123 (3) CREATION.—There is ~~hereby~~ created the Inland
124 Protection Trust Fund, hereinafter referred to as the "fund," to
125 be administered by the department. This fund shall be used by
126 the department as a nonlapsing revolving fund for carrying out
127 the purposes of this section and s. 376.3073. To this fund shall
128 be credited all penalties, judgments, recoveries,
129 reimbursements, loans, and other fees and charges related to the
130 implementation of this section and s. 376.3073 and the excise

131 tax revenues levied, collected, and credited pursuant to ss.
132 206.9935(3) and 206.9945(1)(c). Charges against the fund shall
133 be made pursuant to ~~in accordance with the provisions of~~ this
134 section.
135 (4) USES.—Whenever, in its determination, incidents of
136 inland contamination related to the storage of petroleum or
137 petroleum products may pose a threat to ~~the environment or~~ the
138 public health, safety, or welfare, water resources, or the
139 environment, the department shall obligate moneys available in
140 the fund to provide for:
141 (a) Prompt investigation and assessment of contamination
142 sites.
143 (b) Expeditious restoration or replacement of potable
144 water supplies as provided in s. 376.30(3)(c)1.
145 (c) Rehabilitation of contamination sites, which shall
146 consist of cleanup of affected soil, groundwater, and inland
147 surface waters, using the most cost-effective alternative that
148 is technologically feasible and reliable and that provides
149 adequate protection of the public health, safety, and welfare,
150 and water resources, and that minimizes environmental damage,
151 pursuant to ~~in accordance with~~ the site selection and cleanup
152 criteria established by the department under subsection (5),
153 except that this paragraph does not ~~nothing herein shall be~~
154 ~~construed to~~ authorize the department to obligate funds for
155 payment of costs which may be associated with, but are not
156 integral to, site rehabilitation, such as the cost for

157 retrofitting or replacing petroleum storage systems.
158 (d) Maintenance and monitoring of contamination sites.
159 (e) Inspection and supervision of activities described in
160 this subsection.
161 (f) Payment of expenses incurred by the department in its
162 efforts to obtain from responsible parties the payment or
163 recovery of reasonable costs resulting from the activities
164 described in this subsection.
165 (g) Payment of any other reasonable costs of
166 administration, including those administrative costs incurred by
167 the Department of Health in providing field and laboratory
168 services, toxicological risk assessment, and other assistance to
169 the department in the investigation of drinking water
170 contamination complaints and costs associated with public
171 information and education activities.
172 (h) Establishment and implementation of the compliance
173 verification program as authorized in s. 376.303(1)(a),
174 including contracting with local governments or state agencies
175 to provide for the administration of such program through
176 locally administered programs, to minimize the potential for
177 further contamination sites.
178 (i) Funding of the provisions of ss. 376.305(6) and
179 376.3072.
180 (j) Activities related to removal and replacement of
181 petroleum storage systems, exclusive of costs of any tank,
182 piping, dispensing unit, or related hardware, if soil removal is

183 approved ~~preapproved~~ as a component of site rehabilitation and
184 requires removal of the tank where remediation is conducted
185 under this section ~~s. 376.30711~~ or if such activities were
186 justified in an approved remedial action plan ~~performed pursuant~~
187 ~~to subsection (12)~~.
188 ~~(k) Activities related to reimbursement application~~
189 ~~preparation and activities related to reimbursement application~~
190 ~~examination by a certified public accountant pursuant to~~
191 ~~subsection (12).~~
192 (k) ~~(l)~~ Reasonable costs of restoring property as nearly as
193 practicable to the conditions which existed before ~~prior to~~
194 activities associated with contamination assessment or remedial
195 action taken under s. 376.303(4).
196 (l) ~~(m)~~ Repayment of loans to the fund.
197 (m) ~~(n)~~ Expenditure of sums from the fund to cover
198 ineligible sites or costs as set forth in subsection (13), if
199 the department in its discretion deems it necessary to do so. In
200 such cases, the department may seek recovery and reimbursement
201 of costs in the same manner and pursuant to ~~in accordance with~~
202 the same procedures ~~as are~~ established for recovery and
203 reimbursement of sums otherwise owed to or expended from the
204 fund.
205 (n) ~~(o)~~ Payment of amounts payable under any service
206 contract entered into by the department pursuant to s. 376.3075,
207 subject to annual appropriation by the Legislature.
208 (o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~

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209 ~~376.30711~~ throughout a state fiscal year. The department shall
210 establish a process to uniformly encumber appropriated funds
211 throughout a state fiscal year and shall allow for emergencies
212 and imminent threats to public ~~human~~ health, safety, and
213 welfare, water resources, and the environment as provided in
214 paragraph (5)(a). This paragraph does not apply to
215 appropriations associated with the free product recovery
216 initiative provided in ~~of~~ paragraph (5)(c) or the ~~preapproved~~
217 advanced cleanup program provided in ~~of~~ s. 376.30713.
218 (p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317
219 by the Fish and Wildlife Conservation Commission. The department
220 shall disburse moneys to the commission for such purpose.
221
222 The Inland Protection Trust Fund may only be used to fund the
223 activities in ss. 376.30-376.317 except ss. 376.3078 and
224 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
225 in each fiscal year shall first be applied or allocated for the
226 payment of amounts payable by the department pursuant to
227 paragraph (n) ~~(o)~~ under a service contract entered into by the
228 department pursuant to s. 376.3075 and appropriated in each year
229 by the Legislature before ~~prior to~~ making or providing for other
230 disbursements from the fund. ~~Nothing in~~ This subsection does not
231 ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
232 cleanup of contamination caused primarily by a discharge of
233 solvents as defined in s. 206.9925(6), or polychlorinated
234 biphenyls when their presence causes them to be hazardous

235 wastes, except solvent contamination which is the result of
236 chemical or physical breakdown of petroleum products and is
237 otherwise eligible. Facilities used primarily for the storage of
238 motor or diesel fuels as defined in ss. 206.01 and 206.86 are
239 ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant
240 to this section.
241 (5) SITE SELECTION AND CLEANUP CRITERIA.—
242 (a) The department shall adopt rules to establish
243 priorities based upon a scoring system for state-conducted
244 cleanup at petroleum contamination sites based upon factors that
245 include, but need not be limited to:
246 1. The degree to which the public ~~human~~ health, safety, or
247 welfare may be affected by exposure to the contamination;
248 2. The size of the population or area affected by the
249 contamination;
250 3. The present and future uses of the affected aquifer or
251 surface waters, with particular consideration as to the
252 probability that the contamination is substantially affecting,
253 or will migrate to and substantially affect, a known public or
254 private source of potable water; and
255 4. The effect of the contamination on water resources and
256 the environment.
257
258 Moneys in the fund shall then be obligated for activities
259 described in paragraphs (4)(a)-(e) at individual sites pursuant
260 to ~~in accordance with~~ such established criteria. However,

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261 ~~nothing in~~ this paragraph does not ~~shall be construed to~~
262 restrict the department from modifying the priority status of a
263 rehabilitation site where conditions warrant, taking into
264 consideration the actual distance between the contamination site
265 and groundwater or surface water receptors or other factors that
266 affect the risk of exposure to petroleum products' chemicals of
267 concern. The department may use the effective date of a
268 department final order granting eligibility pursuant to
269 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to
270 establish a prioritization system within a particular priority
271 scoring range.
272 (b) It is the intent of the Legislature to protect the
273 health of all people under actual circumstances of exposure. The
274 secretary shall establish criteria by rule for the purpose of
275 determining, on a site-specific basis, the rehabilitation
276 program tasks that comprise a site rehabilitation program and
277 the level at which a rehabilitation program task and a site
278 rehabilitation program are ~~may be deemed~~ completed. In
279 establishing the rule, the department shall incorporate, to the
280 maximum extent feasible, risk-based corrective action principles
281 to achieve protection of the public ~~human~~ health, ~~and~~ safety,
282 and welfare, water resources, and the environment in a cost-
283 effective manner as provided in this subsection. Criteria for
284 determining what constitutes a rehabilitation program task or
285 completion of site rehabilitation program tasks and site
286 rehabilitation programs shall be based upon the factors set

287 forth in paragraph (a) and the following additional factors:
288 1. The current exposure and potential risk of exposure to
289 humans and the environment including multiple pathways of
290 exposure.
291 2. The appropriate point of compliance with cleanup target
292 levels for petroleum products' chemicals of concern. The point
293 of compliance shall be at the source of the petroleum
294 contamination. However, the department may ~~is authorized to~~
295 temporarily move the point of compliance to the boundary of the
296 property, or to the edge of the plume when the plume is within
297 the property boundary, while cleanup, including cleanup through
298 natural attenuation processes in conjunction with appropriate
299 monitoring, is proceeding. The department may also ~~is~~
300 ~~authorized~~, pursuant to criteria provided for in this paragraph,
301 ~~to~~ temporarily extend the point of compliance beyond the
302 property boundary with appropriate monitoring, if such extension
303 is needed to facilitate natural attenuation or to address the
304 current conditions of the plume, if the public ~~provided human~~
305 health, ~~public~~ safety, and welfare, water resources, and the
306 environment are adequately protected. Temporary extension of the
307 point of compliance beyond the property boundary, as provided in
308 this subparagraph, must ~~shall~~ include notice to local
309 governments and owners of any property into which the point of
310 compliance is allowed to extend.
311 3. The appropriate site-specific cleanup goal. The site-
312 specific cleanup goal shall be that all petroleum contamination

313 sites ultimately achieve the applicable cleanup target levels
314 provided in this paragraph. However, the department <u>may</u> ~~is~~
315 ~~authorized to~~ allow concentrations of the petroleum products'
316 chemicals of concern to temporarily exceed the applicable
317 cleanup target levels while cleanup, including cleanup through
318 natural attenuation processes in conjunction with appropriate
319 monitoring, is proceeding, <u>if the public</u> ~~provided human~~ health,
320 ~~public~~ safety, <u>and welfare, water resources,</u> and the environment
321 are adequately protected.
322 4. The appropriateness of using institutional or
323 engineering controls. Site rehabilitation programs may include
324 the use of institutional or engineering controls to eliminate
325 the potential exposure to petroleum products' chemicals of
326 concern to humans or the environment. Use of such controls must
327 <u>have prior department approval</u> ~~be preapproved by the department,~~
328 and <u>may</u> ~~institutional controls shall~~ not be acquired with <u>moneys</u>
329 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
330 or engineering controls are implemented to control exposure, the
331 removal of such controls must have prior department approval and
332 must be accompanied immediately by the resumption of active
333 cleanup~~,~~ or other approved controls~~,~~ unless cleanup target
334 levels pursuant to this paragraph have been achieved.
335 5. The additive effects of the petroleum products'
336 chemicals of concern. The synergistic effects of petroleum
337 products' chemicals of concern <u>must</u> ~~shall~~ also be considered
338 when the scientific data becomes available.

339 6. Individual site characteristics which must ~~shall~~
340 include, but not be limited to, the current and projected use of
341 the affected groundwater in the vicinity of the site, current
342 and projected land uses of the area affected by the
343 contamination, the exposed population, the degree and extent of
344 contamination, the rate of contaminant migration, the apparent
345 or potential rate of contaminant degradation through natural
346 attenuation processes, the location of the plume, and the
347 potential for further migration in relation to site property
348 boundaries.
349 7. Applicable state water quality standards.
350 a. Cleanup target levels for petroleum products' chemicals
351 of concern found in groundwater shall be the applicable state
352 water quality standards. Where such standards do not exist, the
353 cleanup target levels for groundwater shall be based on the
354 minimum criteria specified in department rule. The department
355 shall consider the following, as appropriate, in establishing
356 the applicable minimum criteria: calculations using a lifetime
357 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
358 best achievable detection limit; the naturally occurring
359 background concentration; or nuisance, organoleptic, and
360 aesthetic considerations.
361 b. Where surface waters are exposed to petroleum
362 contaminated groundwater, the cleanup target levels for the
363 petroleum products' chemicals of concern shall be based on the
364 surface water standards as established by department rule. The

365 point of measuring compliance with the surface water standards
366 shall be in the groundwater immediately adjacent to the surface
367 water body.
368 8. Whether deviation from state water quality standards or
369 from established criteria is appropriate. The department may
370 issue a "No Further Action Order" based upon the degree to which
371 the desired cleanup target level is achievable and can be
372 reasonably and cost-effectively implemented within available
373 technologies or engineering and institutional control
374 strategies. Where a state water quality standard is applicable,
375 a deviation may not result in the application of cleanup target
376 levels more stringent than the ~~said~~ standard. In determining
377 whether it is appropriate to establish alternate cleanup target
378 levels at a site, the department may consider the effectiveness
379 of source removal that has been completed at the site and the
380 practical likelihood of~~:~~ the use of low yield or poor quality
381 groundwater; the use of groundwater near marine surface water
382 bodies; the current and projected use of the affected
383 groundwater in the vicinity of the site; or the use of
384 groundwater in the immediate vicinity of the storage tank area,
385 where it has been demonstrated that the groundwater
386 contamination is not migrating away from such localized source,
387 if the public~~; provided human~~ health, ~~public~~ safety, and
388 welfare, water resources, and the environment are adequately
389 protected.
390 9. Appropriate cleanup target levels for soils.

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391 a. In establishing soil cleanup target levels for human
392 exposure to petroleum products' chemicals of concern found in
393 soils from the land surface to 2 feet below land surface, the
394 department shall consider the following, as appropriate:
395 calculations using a lifetime cancer risk level of 1.0E-6; a
396 hazard index of 1 or less; the best achievable detection limit;
397 or the naturally occurring background concentration.
398 b. Leachability-based soil target levels shall be based on
399 protection of the groundwater cleanup target levels or the
400 alternate cleanup target levels for groundwater established
401 pursuant to this paragraph, as appropriate. Source removal and
402 other cost-effective alternatives that are technologically
403 feasible shall be considered in achieving the leachability soil
404 target levels established by the department. The leachability
405 goals do not apply ~~shall not be applicable~~ if the department
406 determines, based upon individual site characteristics, that
407 petroleum products' chemicals of concern will not leach into the
408 groundwater at levels which pose a threat to public ~~human~~
409 health, ~~and~~ safety, and welfare, water resources, or the
410 environment.
411
412 ~~However, nothing in~~ This paragraph does not ~~shall be construed~~
413 ~~to~~ restrict the department from temporarily postponing
414 completion of any site rehabilitation program for which funds
415 are being expended whenever such postponement is ~~deemed~~
416 necessary in order to make funds available for rehabilitation of

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417 a contamination site with a higher priority status.
418 (c) The department shall require source removal, if
419 warranted and cost-effective, at each site eligible for
420 restoration funding from the ~~Inland Protection Trust~~ fund.
421 1. Funding for free product recovery may be provided in
422 advance of the order established by the priority ranking system
423 under paragraph (a) for site cleanup activities. However, a
424 separate prioritization for free product recovery shall be
425 established consistent with paragraph (a). No more than $5
426 million shall be encumbered from the ~~Inland Protection Trust~~
427 fund in any fiscal year for free product recovery conducted in
428 advance of the priority order under paragraph (a) established
429 for site cleanup activities.
430 2. Once free product removal and other source removal
431 identified in this paragraph are completed at a site, and
432 notwithstanding the order established by the priority ranking
433 system under paragraph (a) for site cleanup activities, the
434 department may reevaluate the site to determine the degree of
435 active cleanup needed to continue site rehabilitation. Further,
436 the department shall determine whether ~~if~~ the reevaluated site
437 qualifies for natural attenuation monitoring, long-term natural
438 attenuation monitoring, or no further action. If additional site
439 rehabilitation is necessary to reach no further action status,
440 the site rehabilitation shall be conducted in the order
441 established by the priority ranking system under paragraph (a).
442 The department shall use ~~utilize~~ natural attenuation monitoring

443 strategies and, when cost-effective, transition sites eligible
444 for restoration funding assistance to long-term natural
445 attenuation monitoring where the plume is shrinking or stable
446 and confined to the source property boundaries and the petroleum
447 products' chemicals of concern meet the natural attenuation
448 default concentrations, as defined by department rule. If the
449 plume migrates beyond the source property boundaries, natural
450 attenuation monitoring may be conducted pursuant to ~~in~~
451 ~~accordance with~~ department rule, or if the site no longer
452 qualifies for natural attenuation monitoring, active remediation
453 may be resumed. For long-term natural attenuation monitoring, if
454 the petroleum products' chemicals of concern increase or are not
455 significantly reduced after 42 months of monitoring, or if the
456 plume migrates beyond the property boundaries, active
457 remediation shall be resumed as necessary. For sites undergoing
458 active remediation, the department shall evaluate ~~template~~ the
459 cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~
460 to ensure that site mobilizations are performed in a cost-
461 effective manner. Sites that are not eligible for state
462 restoration funding may transition to long-term natural
463 attenuation monitoring using the criteria in this subparagraph.
464 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site
465 from pursuing a "No Further Action" order with conditions.
466 3. The department shall evaluate whether higher natural
467 attenuation default concentrations for natural attenuation
468 monitoring or long-term natural attenuation monitoring are cost-

469 effective and would adequately protect the public health,
470 safety, and welfare, water resources, and the environment. The
471 department shall also evaluate site-specific characteristics
472 that would allow for higher natural attenuation or long-term
473 natural attenuation concentration levels.
474 4. A local government may not deny a building permit based
475 solely on the presence of petroleum contamination for any
476 construction, repairs, or renovations performed in conjunction
477 with tank upgrade activities to an existing retail fuel facility
478 if the facility was fully operational before the building permit
479 was requested and if the construction, repair, or renovation is
480 performed by a licensed contractor. All building permits and any
481 construction, repairs, or renovations performed in conjunction
482 with such permits must comply with the applicable provisions of
483 chapters 489 and 553.
484 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—
485 (a) Site rehabilitation work on sites which are eligible
486 for state-funded cleanup from the fund pursuant to this section
487 and ss. 376.305(6), 376.3072, and 376.3073 may only be funded
488 pursuant to this section. A facility operator shall abate the
489 source of discharge for a new release that occurred after March
490 29, 1995. If free product is present, the operator shall notify
491 the department, and the department may direct the removal of the
492 free product. The department shall grant approval to continue
493 site rehabilitation pursuant to this section.
494 (b) When contracting for site rehabilitation activities

495 performed under the Petroleum Restoration Program, the
496 department shall comply with competitive procurement
497 requirements provided in chapter 287 or rules adopted under this
498 section or s. 287.0595. A competitive solicitation issued
499 pursuant to this section is not subject to s. 287.055.
500 (c) Each contractor performing site assessment and
501 remediation activities for state-funded sites under this section
502 shall certify to the department that the contractor meets all
503 certification and license requirements imposed by law. Each
504 contractor shall certify to the department that the contractor
505 meets the following minimum qualifications:
506 1. Complies with applicable Occupational Safety and Health
507 Administration regulations.
508 2. Maintains workers' compensation insurance for employees
509 as required by the Florida Workers' Compensation Law.
510 3. Maintains comprehensive general liability and
511 comprehensive automobile liability insurance with minimum limits
512 of at least $1 million per occurrence and $1 million annual
513 aggregate to pay claims for damage for personal injury,
514 including accidental death, as well as claims for property
515 damage that may arise from performance of work under the
516 program, which insurance designates the state as an additional
517 insured party.
518 4. Maintains professional liability insurance of at least
519 $1 million per occurrence and $1 million annual aggregate.
520 5. Has the capacity to perform or directly supervise the

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521 majority of the rehabilitation work at a site pursuant to s.
522 489.113(9).
523 (d) The department rules implementing this section must
524 specify that only qualified vendors may submit responses on a
525 competitive solicitation. The department rules must also include
526 procedures for the rejection of vendors not meeting the minimum
527 qualifications on the opening of a competitive solicitation and
528 requirements for a vendor to maintain its qualifications in
529 order to enter contracts or perform rehabilitation work.
530 (e) A contractor that performs services pursuant to this
531 subsection may file invoices for payment with the department for
532 the services described in the approved contract. The invoices
533 for payment must be submitted to the department on forms
534 provided by the department, together with evidence documenting
535 that activities were conducted or completed pursuant to the
536 approved contract. If there are sufficient unencumbered funds
537 available in the fund which have been appropriated for
538 expenditure by the Legislature, and if all of the terms of the
539 approved contract have been met, invoices for payment must be
540 paid pursuant to s. 215.422. After a contractor has submitted
541 its invoices to the department, and before payment is made, the
542 contractor may assign its right to payment to another person
543 without recourse of the assignee or assignor to the state. In
544 such cases, the assignee must be paid pursuant to s. 215.422.
545 Prior notice of the assignment and assignment information must
546 be made to the department and must be signed and notarized by

547 the assigning party.
548 (f) The contractor shall submit an invoice to the
549 department within 30 days after the date of the department's
550 written acceptance of each interim deliverable or written
551 approval of the final deliverable specified in the approved
552 contract.
553 (g) The department shall make payments based on the terms
554 of an approved contract for site rehabilitation work. The
555 department may, based on its experience and the past performance
556 and concerns regarding a contractor, retain up to 25 percent of
557 the contracted amount or use performance bonds to ensure
558 performance. The amount of retainage and the amount of
559 performance bonds, as well as the terms and conditions for such,
560 must be included in the approved contract.
561 (h) The contractor or the person to which the contractor
562 has assigned its right to payment pursuant to paragraph (e)
563 shall make prompt payment to subcontractors and suppliers for
564 their costs associated with an approved contract pursuant to s.
565 287.0585(1).
566 (i) The exemption under s. 287.0585(2) does not apply to
567 payments associated with an approved contract.
568 (j) The department may withhold payment if the validity or
569 accuracy of a contractor's invoices or supporting documents is
570 in question.
571 (k) This section does not authorize payment to a person
572 for costs of contaminated soil treatment or disposal that does

573 not meet the applicable rules of this state for such treatment
574 or disposal, including all general permitting, state air
575 emission standards, monitoring, sampling, and reporting rules
576 more specifically described in department rules.
577 (l) The department shall terminate or suspend a
578 contractor's eligibility for participation in the program if the
579 contractor fails to perform its contractual duties for site
580 rehabilitation program tasks.
581 (m) A site owner or operator, or his or her designee, may
582 not receive any remuneration, in cash or in kind, directly or
583 indirectly, from a rehabilitation contractor performing site
584 cleanup activities pursuant to this section.
585 (7)~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
586 funded as follows:
587 (a) All excise taxes levied, collected, and credited to
588 the fund in accordance with ~~the provisions of~~ ss. 206.9935(3)
589 and 206.9945(1)(c).
590 (b) All penalties, judgments, recoveries, reimbursements,
591 and other fees and charges credited to the fund pursuant to ~~in~~
592 ~~accordance with the provisions of~~ subsection (3).
593 (8)~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
594 REIMBURSEMENT.—
595 (a) Except as provided in subsection (10) ~~(9)~~ and as
596 otherwise provided by law, the department shall recover to the
597 use of the fund from a person or persons at any time causing or
598 having caused the discharge or from the Federal Government,

599 jointly and severally, all sums owed or expended from the fund~~,~~
600 pursuant to s. 376.308, except that the department may decline
601 to pursue such recovery if it finds the amount involved too
602 small or the likelihood of recovery too uncertain. Sums
603 recovered as a result of damage due to a discharge related to
604 the storage of petroleum or petroleum products or other similar
605 disaster shall be apportioned between the fund and the General
606 Revenue Fund so as to repay the full costs to the General
607 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
608 disaster. A ~~Any~~ request for reimbursement to the fund for such
609 costs, if not paid within 30 days after ~~of~~ demand, shall be
610 turned over to the department for collection.
611 (b) Except as provided in subsection (10) ~~(9)~~ and as
612 otherwise provided by law, it is the duty of the department in
613 administering the fund diligently to pursue the reimbursement to
614 the fund of any sum expended from the fund for cleanup and
615 abatement pursuant to ~~in accordance with the provisions of~~ this
616 section or s. 376.3073, unless the department finds the amount
617 involved too small or the likelihood of recovery too uncertain.
618 For the purposes of s. 95.11, the limitation period within which
619 to institute an action to recover such sums shall begin ~~commence~~
620 on the last date on which ~~any~~ such sums were expended~~,~~ and not
621 the date on which ~~that~~ the discharge occurred. The department's
622 claim for recovery of payments or overpayments from the fund
623 must be based on the law in existence at the time of the payment
624 or overpayment.

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625 (c) If the department initiates an enforcement action to
626 clean up a contaminated site and determines that the responsible
627 party cannot ~~is~~ financially ~~unable to~~ undertake complete
628 restoration of the contaminated site, that the current property
629 owner was not responsible for the discharge when the
630 contamination first occurred, or that the state's interest can
631 best be served by conducting cleanup, the department may enter
632 into an agreement with the responsible party or property owner
633 whereby the department agrees to conduct site rehabilitation and
634 the responsible party or property owner agrees to pay for the
635 portion of the cleanup costs that are within such party's or
636 owner's financial capabilities as determined by the department,
637 taking into consideration the party's or owner's net worth and
638 the economic impact on the party or owner.
639 (9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are
640 not needed currently to meet the obligations of the department
641 in the exercise of its responsibilities under this section and
642 s. 376.3073 shall be deposited with the Chief Financial Officer
643 to the credit of the fund and may be invested in such manner as
644 ~~is~~ provided ~~for~~ by law ~~statute~~. The interest received on such
645 investment shall be credited to the fund. Any provisions of law
646 to the contrary notwithstanding, such interest may be freely
647 transferred between the ~~this~~ trust fund and the Water Quality
648 Assurance Trust Fund~~,~~ in the discretion of the department.
649 (10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage
650 early detection, reporting, and cleanup of contamination from

651 leaking petroleum storage systems, the department shall, within
652 the guidelines established in this subsection, conduct an
653 incentive program which provides ~~shall provide~~ for a 30-month
654 grace period ending on December 31, 1988. ~~Pursuant thereto:~~
655 (a) The department shall establish reasonable requirements
656 for the written reporting of petroleum contamination incidents
657 and shall distribute forms to registrants under s. 376.303(1)(b)
658 and to other interested parties upon request to be used for such
659 purpose. Until such forms are available for distribution, the
660 department shall take reports of such incidents, however made,
661 but shall notify any person making such a report that a complete
662 written report of the incident will be required by the
663 department at a later time, the form for which will be provided
664 by the department.
665 (b) When reporting forms become available for
666 distribution, all sites involving incidents of contamination
667 from petroleum storage systems initially reported to the
668 department at any time from midnight on June 30, 1986, to
669 midnight on December 31, 1988, shall be qualified sites if~~,~~
670 ~~provided that such~~ a complete written report is filed with
671 respect thereto within a reasonable time. Subject to the delays
672 which may occur as a result of the prioritization of sites under
673 paragraph (5)(a) for any qualified site, costs for activities
674 described in paragraphs (4)(a)-(e) shall be absorbed at the
675 expense of the fund, without recourse to reimbursement or
676 recovery, with the following exceptions:

677 1. ~~The provisions of~~ This subsection <u>does</u> ~~shall~~ not apply
678 to <u>a</u> ~~any~~ site where the department has been denied site access
679 to implement ~~the provisions of~~ this section.
680 2. ~~The provisions of~~ This subsection <u>does</u> ~~shall~~ not ~~be~~
681 ~~construed to~~ authorize or require reimbursement from the fund
682 for costs expended <u>before</u> ~~prior to~~ the beginning of the grace
683 period~~, except as provided in subsection (12)~~.
684 3.a. Upon discovery by the department that the owner or
685 operator of a petroleum storage system has been grossly
686 negligent in the maintenance of such petroleum storage system;
687 has, with willful intent to conceal the existence of a serious
688 discharge, falsified inventory or reconciliation records
689 maintained with respect to the site at which such system is
690 located; or has intentionally damaged such petroleum storage
691 system, the site at which such system is located shall be
692 ineligible for participation in the incentive program and the
693 owner shall be liable for all costs due to discharges from
694 petroleum storage systems at that site, any other provisions of
695 chapter 86-159, Laws of Florida, to the contrary
696 notwithstanding. For the purposes of this paragraph, willful
697 failure to maintain inventory and reconciliation records,
698 willful failure to make monthly monitoring system checks where
699 such systems are in place, and failure to meet monitoring and
700 retrofitting requirements within the schedules established under
701 chapter 62-761, Florida Administrative Code, or violation of
702 similar rules adopted by the department under this chapter,

703 constitutes ~~shall be construed to be~~ gross negligence in the
704 maintenance of a petroleum storage system.
705 b. The department shall redetermine the eligibility of
706 petroleum storage systems for which a timely Early Detection
707 Incentive Program ~~EDI~~ application was filed, but which were
708 deemed ineligible by the department, under the following
709 conditions:
710 (I) The owner or operator, on or before March 31, 1991,
711 shall submit, in writing, notification that the storage system
712 is now in compliance with department rules adopted pursuant to
713 s. 376.303, and which requests the department to reevaluate the
714 storage system eligibility; and
715 (II) The department verifies the storage system compliance
716 based on a compliance inspection.
717
718 ~~Provided, however, that~~ A site may be determined eligible by the
719 department for good cause shown, including, but not limited to,
720 demonstration by the owner or operator that to achieve
721 compliance would cause an increase in the potential for the
722 spread of the contamination.
723 c. Redetermination of eligibility pursuant to sub-
724 subparagraph b. shall not be available to:
725 (I) Petroleum storage systems owned or operated by the
726 Federal Government.
727 (II) Facilities that denied site access to the department.
728 (III) Facilities where a discharge was intentionally

729 concealed.
730 (IV) Facilities that were denied eligibility due to:
731 (A) Absence of contamination, unless any such facility
732 subsequently establishes that contamination did exist at that
733 facility on or before December 31, 1988.
734 (B) Contamination from substances that were not petroleum
735 or a petroleum product.
736 (C) Contamination that was not from a petroleum storage
737 system.
738 d. ~~EDI~~ Applicants who demonstrate compliance for a site
739 pursuant to sub-subparagraph b. are eligible for the Early
740 Detection Incentive Program and site rehabilitation funding
741 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.
742
743 If, in order to avoid prolonged delay, the department in its
744 discretion deems it necessary to expend sums from the fund to
745 cover ineligible sites or costs as set forth in this paragraph,
746 the department may do so and seek recovery and reimbursement
747 therefor in the same manner and pursuant to ~~in accordance with~~
748 the same procedures ~~as are~~ established for recovery and
749 reimbursement of sums otherwise owed to or expended from the
750 fund.
751 (c) A ~~No~~ report of a discharge made to the department by a
752 ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or
753 ~~any~~ rules adopted ~~promulgated~~ pursuant to this subsection may
754 not ~~hereto, shall~~ be used directly as evidence of liability for

755 such discharge in any civil or criminal trial arising out of the
756 discharge.
757 (d) ~~The provisions of~~ This subsection does ~~shall~~ not apply
758 to petroleum storage systems owned or operated by the Federal
759 Government.
760 (11) ~~(10)~~ VIOLATIONS; PENALTY.—A ~~It is unlawful for any~~
761 person may not ~~to~~:
762 (a) Falsify inventory or reconciliation records maintained
763 in compliance with chapters 62-761 and 62-762, Florida
764 Administrative Code, with willful intent to conceal the
765 existence of a serious leak; or
766 (b) Intentionally damage a petroleum storage system.
767
768 A ~~Any~~ person convicted of such a violation is ~~shall be~~ guilty of
769 a felony of the third degree, punishable as provided in s.
770 775.082, s. 775.083, or s. 775.084.
771 (12) ~~(11)~~ SITE CLEANUP.—
772 (a) Voluntary cleanup.—This section does not prohibit a
773 person from conducting site rehabilitation ~~either~~ through his or
774 her own personnel or through responsible response action
775 contractors or subcontractors when such person is not seeking
776 site rehabilitation funding from the fund. Such voluntary
777 cleanups must meet all applicable environmental standards.
778 (b) Low-scored site initiative.—Notwithstanding
779 subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority
780 ranking score of 29 points or less may voluntarily participate

781 in the low-scored site initiative regardless of, whether ~~or not~~
782 the site is eligible for state restoration funding.
783 1. To participate in the low-scored site initiative, the
784 responsible party or property owner must affirmatively
785 demonstrate that the following conditions are met:
786 a. Upon reassessment pursuant to department rule, the site
787 retains a priority ranking score of 29 points or less.
788 b. ~~No~~ Excessively contaminated soil, as defined by
789 department rule, does not exist ~~exists~~ onsite as a result of a
790 release of petroleum products.
791 c. A minimum of 6 months of groundwater monitoring
792 indicates that the plume is shrinking or stable.
793 d. The release of petroleum products at the site does not
794 adversely affect adjacent surface waters, including their
795 effects on human health and the environment.
796 e. The area of groundwater containing the petroleum
797 products' chemicals of concern is less than one-quarter acre and
798 is confined to the source property boundaries of the real
799 property on which the discharge originated.
800 f. Soils onsite that are subject to human exposure found
801 between land surface and 2 feet below land surface meet the soil
802 cleanup target levels established by department rule or human
803 exposure is limited by appropriate institutional or engineering
804 controls.
805 2. Upon affirmative demonstration of the conditions under
806 subparagraph 1., the department shall issue a determination of

807 "No Further Action." Such determination acknowledges that
808 minimal contamination exists onsite and that such contamination
809 is not a threat to the public ~~human~~ health, safety, or welfare,
810 water resources, or the environment. If no contamination is
811 detected, the department may issue a site rehabilitation
812 completion order.
813 3. Sites that are eligible for state restoration funding
814 may receive payment of ~~preapproved~~ costs for the low-scored site
815 initiative as follows:
816 a. A responsible party or property owner may submit an
817 assessment plan designed to affirmatively demonstrate that the
818 site meets the conditions under subparagraph 1. Notwithstanding
819 the priority ranking score of the site, the department may
820 approve ~~preapprove~~ the cost of the assessment ~~pursuant to s.~~
821 ~~376.30711~~, including 6 months of groundwater monitoring, not to
822 exceed $30,000 for each site. The department may not pay the
823 costs associated with the establishment of institutional or
824 engineering controls.
825 b. The assessment work shall be completed no later than 6
826 months after the department issues its approval.
827 c. No more than $10 million for the low-scored site
828 initiative may be encumbered from the ~~Inland Protection Trust~~
829 fund in any fiscal year. Funds shall be made available on a
830 first-come, first-served basis and shall be limited to 10 sites
831 in each fiscal year for each responsible party or property
832 owner.

833 d. Program deductibles, copayments, and the limited
834 contamination assessment report requirements under paragraph
835 (13)(c) do not apply to expenditures under this paragraph.
836 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as~~
837 ~~provided in s. 2(3), chapter 95-2, Laws of Florida, this~~
838 ~~subsection shall not apply to any site rehabilitation program~~
839 ~~task initiated after March 29, 1995. Effective August 1, 1996,~~
840 ~~no further site rehabilitation work on sites eligible for state-~~
841 ~~funded cleanup from the Inland Protection Trust Fund shall be~~
842 ~~eligible for reimbursement pursuant to this subsection. The~~
843 ~~person responsible for conducting site rehabilitation may seek~~
844 ~~reimbursement for site rehabilitation program task work~~
845 ~~conducted after March 28, 1995, in accordance with s. 2(2) and~~
846 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~
847 ~~site rehabilitation program task is completed. A site~~
848 ~~rehabilitation program task shall be considered to be initiated~~
849 ~~when actual onsite work or engineering design, pursuant to~~
850 ~~chapter 62-770, Florida Administrative Code, which is integral~~
851 ~~to performing a site rehabilitation program task has begun and~~
852 ~~shall not include contract negotiation and execution, site~~
853 ~~research, or project planning. All reimbursement applications~~
854 ~~pursuant to this subsection must be submitted to the department~~
855 ~~by January 3, 1997. The department shall not accept any~~
856 ~~applications for reimbursement or pay any claims on applications~~
857 ~~for reimbursement received after that date; provided, however if~~
858 ~~an application filed on or prior to January 3, 1997, was~~

859 ~~returned by the department on the grounds of untimely filing, it~~
860 ~~shall be refiled within 30 days after the effective date of this~~
861 ~~act in order to be processed.~~
862 ~~(a) Legislative findings.—The Legislature finds and~~
863 ~~declares that rehabilitation of contamination sites should be~~
864 ~~conducted in a manner and to a level of completion which will~~
865 ~~protect the public health, safety, and welfare and will minimize~~
866 ~~damage to the environment.~~
867 ~~(b) Conditions.—~~
868 ~~1. The owner, operator, or his or her designee of a site~~
869 ~~which is eligible for restoration funding assistance in the EDI,~~
870 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~
871 ~~Protection Trust Fund of allowable costs at reasonable rates~~
872 ~~incurred on or after January 1, 1985, for completed program~~
873 ~~tasks as identified in the department rule promulgated pursuant~~
874 ~~to paragraph (5)(b), or uncompleted program tasks pursuant to~~
875 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~
876 ~~section. It is unlawful for a site owner or operator, or his or~~
877 ~~her designee, to receive any remuneration, in cash or in kind,~~
878 ~~directly or indirectly from the rehabilitation contractor.~~
879 ~~2. Nothing in this subsection shall be construed to~~
880 ~~authorize reimbursement to any person for costs of contaminated~~
881 ~~soil treatment or disposal that does not meet the applicable~~
882 ~~rules of this state for such treatment or disposal, including~~
883 ~~all general permitting, state air emission standards,~~
884 ~~monitoring, sampling, and reporting rules more specifically~~

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885 ~~described in department rules.~~
886 ~~(c) Legislative intent.—Due to the value of the potable~~
887 ~~water of this state, it is the intent of the Legislature that~~
888 ~~the department initiate and facilitate as many cleanups as~~
889 ~~possible utilizing the resources of the state, local~~
890 ~~governments, and the private sector, recognizing that source~~
891 ~~removal, wherever it is technologically feasible and cost-~~
892 ~~effective, shall be considered the primary initial response to~~
893 ~~protect public health, safety, and the environment.~~
894 ~~(d) Amount of reimbursement.—The department shall~~
895 ~~reimburse actual and reasonable costs for site rehabilitation.~~
896 ~~The department shall not reimburse interest on the amount of~~
897 ~~reimbursable costs for any reimbursement application. However,~~
898 ~~nothing herein shall affect the department's authority to pay~~
899 ~~interest authorized under prior law.~~
900 ~~(e) Records.—The person responsible for conducting site~~
901 ~~rehabilitation, or his or her agent, shall keep and preserve~~
902 ~~suitable records as follows:~~
903 ~~1. Hydrological and other site investigations and~~
904 ~~assessments; site rehabilitation plans; contracts and contract~~
905 ~~negotiations; and accounts, invoices, sales tickets, or other~~
906 ~~payment records from purchases, sales, leases, or other~~
907 ~~transactions involving costs actually incurred related to site~~
908 ~~rehabilitation. Such records shall be made available upon~~
909 ~~request to agents and employees of the department during regular~~
910 ~~business hours and at other times upon written request of the~~

911 ~~department.~~
912 ~~2. In addition, the department may from time to time~~
913 ~~request submission of such site-specific information as it may~~
914 ~~require, unless a waiver or variance from such department~~
915 ~~request is granted pursuant to paragraph (k).~~
916 ~~3. All records of costs actually incurred for cleanup~~
917 ~~shall be certified by affidavit to the department as being true~~
918 ~~and correct.~~
919 ~~(f) Application for reimbursement.—Any eligible person who~~
920 ~~performs a site rehabilitation program or performs site~~
921 ~~rehabilitation program tasks such as preparation of site~~
922 ~~rehabilitation plans or assessments; product recovery; cleanup~~
923 ~~of groundwater or inland surface water; soil treatment or~~
924 ~~removal; or any other tasks identified by department rule~~
925 ~~developed pursuant to subsection (5), may apply for~~
926 ~~reimbursement. Such applications for reimbursement must be~~
927 ~~submitted to the department on forms provided by the department,~~
928 ~~together with evidence documenting that site rehabilitation~~
929 ~~program tasks were conducted or completed in accordance with~~
930 ~~department rule developed pursuant to subsection (5), and other~~
931 ~~such records or information as the department requires. The~~
932 ~~reimbursement application and supporting documentation shall be~~
933 ~~examined by a certified public accountant in accordance with~~
934 ~~standards established by the American Institute of Certified~~
935 ~~Public Accountants. A copy of the accountant's report shall be~~
936 ~~submitted with the reimbursement application. Applications for~~

937 ~~reimbursement shall not be approved for site rehabilitation~~
938 ~~program tasks which have not been completed, except for the task~~
939 ~~of remedial action and except for uncompleted program tasks~~
940 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
941 ~~Applications for remedial action may be submitted semiannually~~
942 ~~at the discretion of the person responsible for cleanup. After~~
943 ~~an applicant has filed an application with the department and~~
944 ~~before payment is made, the applicant may assign the right to~~
945 ~~payment to any other person, without recourse of the assignee or~~
946 ~~assignor to the state, without affecting the order in which~~
947 ~~payment is made. Information necessary to process the~~
948 ~~application shall be requested from and provided by the~~
949 ~~assigning applicant. Proper notice of the assignment and~~
950 ~~assignment information shall be made to the department which~~
951 ~~notice shall be signed and notarized by the assigning applicant.~~
952 ~~(g) Review.—~~
953 ~~1. Provided there are sufficient unencumbered funds~~
954 ~~available in the Inland Protection Trust Fund, or to the extent~~
955 ~~proceeds of debt obligations are available for the payment of~~
956 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
957 ~~department shall have 60 days to determine if the applicant has~~
958 ~~provided sufficient information for processing the application~~
959 ~~and shall request submission of any additional information that~~
960 ~~the department may require within such 60-day period. If the~~
961 ~~applicant believes any request for additional information is not~~
962 ~~authorized, the applicant may request a hearing pursuant to ss.~~

963 ~~120.569 and 120.57. Once the department requests additional~~
964 ~~information, the department may request only that information~~
965 ~~needed to clarify such additional information or to answer new~~
966 ~~questions raised by or directly related to such additional~~
967 ~~information.~~
968 ~~2. The department shall deny or approve the application~~
969 ~~for reimbursement within 90 days after receipt of the last item~~
970 ~~of timely requested additional material, or, if no additional~~
971 ~~material is requested, within 90 days of the close of the 60-day~~
972 ~~period described in subparagraph 1., unless the total review~~
973 ~~period is otherwise extended by written mutual agreement of the~~
974 ~~applicant and the department.~~
975 ~~3. Final disposition of an application shall be provided~~
976 ~~to the applicant in writing, accompanied by a written~~
977 ~~explanation setting forth in detail the reason or reasons for~~
978 ~~the approval or denial. If the department fails to make a~~
979 ~~determination on an application within the time provided in~~
980 ~~subparagraph 2., or denies an application, or if a dispute~~
981 ~~otherwise arises with regard to reimbursement, the applicant may~~
982 ~~request a hearing pursuant to ss. 120.569 and 120.57.~~
983 ~~(h) Reimbursement.—Upon approval of an application for~~
984 ~~reimbursement, reimbursement for reasonable expenditures of a~~
985 ~~site rehabilitation program or site rehabilitation program tasks~~
986 ~~documented therein shall be made in the order in which the~~
987 ~~department receives completed applications. Effective January 1,~~
988 ~~1997, all unpaid reimbursement applications are subject to~~

989 ~~payment on the following terms: The department shall develop a~~
990 ~~schedule of the anticipated dates of reimbursement of~~
991 ~~applications submitted to the department pursuant to this~~
992 ~~subsection. The schedule shall specify the projected date of~~
993 ~~payment based on equal monthly payments and projected annual~~
994 ~~revenue of $100 million. Based on the schedule, the department~~
995 ~~shall notify all reimbursement applicants of the projected date~~
996 ~~of payment of their applications. The department shall direct~~
997 ~~the Inland Protection Financing Corporation to pay applicants~~
998 ~~the present value of their applications as soon as practicable~~
999 ~~after approval by the department, subject to the availability of~~
1000 ~~funds within the Inland Protection Financing Corporation. The~~
1001 ~~present value of an application shall be based on the date on~~
1002 ~~which the department anticipates the Inland Protection Financing~~
1003 ~~Corporation will settle the reimbursement application and the~~
1004 ~~schedule's projected date of payment and shall use 3.5 percent~~
1005 ~~as the annual discount rate. The determination of the amount of~~
1006 ~~the claim and the projected date of payment shall be subject to~~
1007 ~~s. 120.57.~~
1008 ~~(i) Liberal construction.—With respect to site~~
1009 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
1010 ~~of this subsection shall be given such liberal construction by~~
1011 ~~the department as will accomplish the purposes set forth in this~~
1012 ~~subsection. With regard to the keeping of particular records or~~
1013 ~~the giving of certain notice, the department may accept as~~
1014 ~~compliance action by a person which meets the intent of the~~

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1015 ~~requirements set forth in this subsection.~~

1016 ~~(j) Reimbursement-review contracts.—The department may~~
1017 ~~contract with entities capable of processing or assisting in the~~
1018 ~~review of reimbursement applications. Any purchase of such~~
1019 ~~services shall not be subject to chapter 287.~~

1020 ~~(k) Audits.—~~

1021 ~~1. The department is authorized to perform financial and~~
1022 ~~technical audits in order to certify site restoration costs and~~
1023 ~~ensure compliance with this chapter. The department shall seek~~
1024 ~~recovery of any overpayments based on the findings of these~~
1025 ~~audits. The department must commence any audit within 5 years~~
1026 ~~after the date of reimbursement, except in cases where the~~
1027 ~~department alleges specific facts indicating fraud.~~

1028 ~~2. Upon determination by the department that any portion~~
1029 ~~of costs which have been reimbursed are disallowed, the~~
1030 ~~department shall give written notice to the applicant setting~~
1031 ~~forth with specificity the allegations of fact which justify the~~
1032 ~~department's proposed action and ordering repayment of~~
1033 ~~disallowed costs within 60 days of notification of the~~
1034 ~~applicant.~~

1035 ~~3. In the event the applicant does not make payment to the~~
1036 ~~department within 60 days of receipt of such notice, the~~
1037 ~~department shall seek recovery in a court of competent~~
1038 ~~jurisdiction to recover reimbursement overpayments made to the~~
1039 ~~person responsible for conducting site rehabilitation, unless~~
1040 ~~the department finds the amount involved too small or the~~

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1041 ~~likelihood of recovery too uncertain.~~
1042 ~~4. In addition to the amount of any overpayment, the~~
1043 ~~applicant shall be liable to the department for interest of 1~~
1044 ~~percent per month or the prime rate, whichever is less, on the~~
1045 ~~amount of overpayment, from the date of overpayment by the~~
1046 ~~department until the applicant satisfies the department's~~
1047 ~~request for repayment pursuant to this paragraph. The~~
1048 ~~calculation of interest shall be tolled during the pendency of~~
1049 ~~any litigation.~~
1050 ~~5. Financial and technical audits frequently are conducted~~
1051 ~~under this section many years after the site rehabilitation~~
1052 ~~activities were performed and the costs examined in the course~~
1053 ~~of the audit were incurred by the person responsible for site~~
1054 ~~rehabilitation. During the intervening span of years, the~~
1055 ~~department's rule requirements and its related guidance and~~
1056 ~~other nonrule policy directives may have changed significantly.~~
1057 ~~The Legislature finds that it may be appropriate for the~~
1058 ~~department to provide relief to persons subject to such~~
1059 ~~requirements in financial and technical audits conducted~~
1060 ~~pursuant to this section.~~
1061 ~~a. The department is authorized to grant variances and~~
1062 ~~waivers from the documentation requirements of subparagraph~~
1063 ~~(c)2. and from the requirements of rules applicable in technical~~
1064 ~~and financial audits conducted under this section. Variances and~~
1065 ~~waivers shall be granted when the person responsible for site~~
1066 ~~rehabilitation demonstrates to the department that application~~

1067 ~~of a financial or technical auditing requirement would create a~~
1068 ~~substantial hardship or would violate principles of fairness.~~
1069 ~~For purposes of this subsection, "substantial hardship" means a~~
1070 ~~demonstrated economic, technological, legal, or other type of~~
1071 ~~hardship to the person requesting the variance or waiver. For~~
1072 ~~purposes of this subsection, "principles of fairness" are~~
1073 ~~violated when the application of a requirement affects a~~
1074 ~~particular person in a manner significantly different from the~~
1075 ~~way it affects other similarly situated persons who are affected~~
1076 ~~by the requirement or when the requirement is being applied~~
1077 ~~retroactively without due notice to the affected parties.~~
1078 ~~b. A person whose reimbursed costs are subject to a~~
1079 ~~financial and technical audit under this section may file a~~
1080 ~~written request to the department for grant of a variance or~~
1081 ~~waiver. The request shall specify:~~
1082 ~~(I) The requirement from which a variance or waiver is~~
1083 ~~requested.~~
1084 ~~(II) The type of action requested.~~
1085 ~~(III) The specific facts which would justify a waiver or~~
1086 ~~variance.~~
1087 ~~(IV) The reason or reasons why the requested variance or~~
1088 ~~waiver would serve the purposes of this section.~~
1089 ~~c. Within 90 days after receipt of a written request for~~
1090 ~~variance or waiver under this subsection, the department shall~~
1091 ~~grant or deny the request. If the request is not granted or~~
1092 ~~denied within 90 days of receipt, the request shall be deemed~~

1093 ~~approved. An order granting or denying the request shall be in~~
1094 ~~writing and shall contain a statement of the relevant facts and~~
1095 ~~reasons supporting the department's action. The department's~~
1096 ~~decision to grant or deny the petition shall be supported by~~
1097 ~~competent substantial evidence and is subject to ss. 120.569 and~~
1098 ~~120.57. Once adopted, model rules promulgated by the~~
1099 ~~Administration Commission under s. 120.542 shall govern the~~
1100 ~~processing of requests under this provision.~~
1101 ~~6. The Chief Financial Officer may audit the records of~~
1102 ~~persons who receive or who have received payments pursuant to~~
1103 ~~this chapter in order to verify site restoration costs, ensure~~
1104 ~~compliance with this chapter, and verify the accuracy and~~
1105 ~~completeness of audits performed by the department pursuant to~~
1106 ~~this paragraph. The Chief Financial Officer may contract with~~
1107 ~~entities or persons to perform audits pursuant to this~~
1108 ~~subparagraph. The Chief Financial Officer shall commence any~~
1109 ~~audit within 1 year after the department's completion of an~~
1110 ~~audit conducted pursuant to this paragraph, except in cases~~
1111 ~~where the department or the Chief Financial Officer alleges~~
1112 ~~specific facts indicating fraud.~~
1113 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
1114 detection, reporting, and cleanup of contamination caused by
1115 discharges of petroleum or petroleum products, the department
1116 shall, within the guidelines established in this subsection,
1117 implement a cost-sharing cleanup program to provide
1118 rehabilitation funding assistance for all property contaminated

1119 by discharges of petroleum or petroleum products occurring
1120 before January 1, 1995, subject to a copayment provided for in a
1121 Petroleum Cleanup Participation Program ~~preapproved~~ site
1122 rehabilitation agreement. Eligibility is ~~shall be~~ subject to an
1123 annual appropriation from the ~~Inland Protection Trust~~ fund.
1124 Additionally, funding for eligible sites is ~~shall be~~ contingent
1125 upon annual appropriation in subsequent years. Such continued
1126 state funding is ~~shall~~ not ~~be deemed~~ an entitlement or a vested
1127 right under this subsection. Eligibility shall be determined in
1128 the program, ~~shall be~~ notwithstanding any other provision of
1129 law, consent order, order, judgment, or ordinance to the
1130 contrary.
1131 (a)1. The department shall accept any discharge reporting
1132 form received before ~~prior to~~ January 1, 1995, as an application
1133 for this program, and the facility owner or operator need not
1134 reapply.
1135 2. Owners or operators of property contaminated by
1136 petroleum or petroleum products from a petroleum storage system
1137 may apply for such program by filing a written report of the
1138 contamination incident, including evidence that such incident
1139 occurred before ~~prior to~~ January 1, 1995, with the department.
1140 Incidents of petroleum contamination discovered after December
1141 31, 1994, at sites which have not stored petroleum or petroleum
1142 products for consumption, use, or sale after such date shall be
1143 presumed to have occurred before ~~prior to~~ January 1, 1995. An
1144 operator's filed report shall be ~~deemed~~ an application of the

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1145 owner for all purposes. Sites reported to the department after
1146 December 31, 1998, are ~~shall~~ not ~~be~~ eligible for the ~~this~~
1147 program.
1148 (b) Subject to annual appropriation from the ~~Inland~~
1149 ~~Protection Trust~~ fund, sites meeting the criteria of this
1150 subsection are eligible for up to $400,000 of site
1151 rehabilitation funding assistance in priority order pursuant to
1152 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting
1153 the criteria of this subsection for which a site rehabilitation
1154 completion order was issued before ~~prior to~~ June 1, 2008, do not
1155 qualify for the 2008 increase in site rehabilitation funding
1156 assistance and are bound by the pre-June 1, 2008, limits. Sites
1157 meeting the criteria of this subsection for which a site
1158 rehabilitation completion order was not issued before ~~prior to~~
1159 June 1, 2008, regardless of whether ~~or not~~ they have previously
1160 transitioned to nonstate-funded cleanup status, may continue
1161 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until
1162 a site rehabilitation completion order is issued or the
1163 increased site rehabilitation funding assistance limit is
1164 reached, whichever occurs first. The department may not pay ~~At~~
1165 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
1166 approved contract ~~preapproved site rehabilitation program under~~
1167 ~~s. 376.30711 be reimbursable~~.
1168 (c) Upon notification by the department that
1169 rehabilitation funding assistance is available for the site
1170 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the

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1171 owner, operator, or person otherwise responsible for site
1172 rehabilitation shall provide the department with a limited
1173 contamination assessment report and shall enter into a Petroleum
1174 Cleanup Participation Program ~~preapproved~~ site rehabilitation
1175 agreement with the department ~~and a contractor qualified under~~
1176 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-
1177 percent copayment by the owner, operator, or person otherwise
1178 responsible for conducting site rehabilitation. The owner,
1179 operator, or person otherwise responsible for conducting site
1180 rehabilitation shall adequately demonstrate the ability to meet
1181 the copayment obligation. The limited contamination assessment
1182 report and the copayment costs may be reduced or eliminated if
1183 the owner and all operators responsible for restoration under s.
1184 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
1185 comply with the copayment and limited contamination assessment
1186 report requirements. The department shall take into
1187 consideration the owner's and operator's net worth in making the
1188 determination of financial ability. In the event the department
1189 and the owner, operator, or person otherwise responsible for
1190 site rehabilitation cannot ~~are unable to~~ complete negotiation of
1191 the cost-sharing agreement within 120 days after beginning
1192 ~~commencing~~ negotiations, the department shall terminate
1193 negotiations and the site shall be ~~deemed~~ ineligible for state
1194 funding under this subsection and all liability protections
1195 provided for in this subsection shall be revoked.
1196 (d) A ~~No~~ report of a discharge made to the department by a

1197 ~~any~~ person pursuant to ~~in accordance with~~ this subsection~~,~~ or
1198 any rules adopted pursuant to this subsection may not ~~hereto,~~
1199 ~~shall~~ be used directly as evidence of liability for such
1200 discharge in any civil or criminal trial arising out of the
1201 discharge.
1202 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
1203 ~~to~~ preclude the department from pursuing penalties under ~~in~~
1204 ~~accordance with~~ s. 403.141 for violations of any law or any
1205 rule, order, permit, registration, or certification adopted or
1206 issued by the department pursuant to its lawful authority.
1207 (f) Upon the filing of a discharge reporting form under
1208 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
1209 government may not ~~shall~~ pursue any judicial or enforcement
1210 action to compel rehabilitation of the discharge. This paragraph
1211 does ~~shall~~ not prevent any such action with respect to
1212 discharges determined ineligible under this subsection or to
1213 sites for which rehabilitation funding assistance is available
1214 pursuant to subsections ~~in accordance with subsection~~ (5) and
1215 (6) ~~s. 376.30711~~.
1216 (g) The following are ~~shall be~~ excluded from participation
1217 in the program:
1218 1. Sites at which the department has been denied
1219 reasonable site access to implement ~~the provisions of~~ this
1220 section.
1221 2. Sites that were active facilities when owned or
1222 operated by the Federal Government.

1223 3. Sites that are identified by the United States
1224 Environmental Protection Agency to be on, or which qualify for
1225 listing on, the National Priorities List under Superfund. This
1226 exception does not apply to those sites for which eligibility
1227 has been requested or granted as of the effective date of this
1228 act under the Early Detection Incentive Program established
1229 pursuant to s. 15, chapter 86-159, Laws of Florida.
1230 4. <u>Sites for which</u> ~~The~~ contamination is covered under the
1231 Early Detection Incentive Program, the Abandoned Tank
1232 Restoration Program<u>,</u> or the Petroleum Liability and Restoration
1233 Insurance Program, in which case site rehabilitation funding
1234 assistance shall continue under the respective program.
1235 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—<u>Before</u> ~~Prior~~
1236 ~~to~~ the department <u>enters</u> ~~entering~~ into a service contract with
1237 the Inland Protection Financing Corporation which includes
1238 payments by the department to support any existing or planned
1239 note, bond, certificate of indebtedness, or other obligation or
1240 evidence of indebtedness of the corporation pursuant to s.
1241 376.3075, the Legislature, by law, must specifically authorize
1242 the department to enter into such a contract. The corporation
1243 may issue bonds in an amount not to exceed $104 million, with a
1244 term up to 15 years, and annual payments not in excess of $10.4
1245 million. The department may enter into a service contract in
1246 conjunction with the issuance of such bonds which provides for
1247 annual payments for debt service payments or other amounts
1248 payable with respect to bonds, plus any administrative expenses

1249 of the corporation to finance the rehabilitation of petroleum
1250 contamination sites pursuant to ss. 376.30-376.317.
1251 Section 2. Section 376.30711, Florida Statutes, is
1252 repealed.
1253 Section 3. Subsections (4) and (30) of section 376.301,
1254 Florida Statutes, are amended to read:
1255 376.301 Definitions of terms used in ss. 376.30-376.317,
1256 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
1257 376.75, unless the context clearly requires otherwise, the term:
1258 ~~(4) "Backlog" means reimbursement obligations incurred~~
1259 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
1260 ~~authorized for reimbursement under the provisions of s.~~
1261 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
1262 ~~within the backlog are subject to adjustment, where appropriate.~~
1263 ~~(30) "Person responsible for conducting site~~
1264 ~~rehabilitation" means the site owner, operator, or the person~~
1265 ~~designated by the site owner or operator on the reimbursement~~
1266 ~~application. Mortgage holders and trust holders may be eligible~~
1267 ~~to participate in the reimbursement program pursuant to s.~~
1268 ~~376.3071(12).~~
1269 Section 4. Subsection (5) of section 376.302, Florida
1270 Statutes, is amended to read:
1271 376.302 Prohibited acts; penalties.—
1272 (5) A ~~Any~~ person who commits fraud in representing his or
1273 her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in
1274 submitting a payment invoice ~~reimbursement request~~ pursuant to

1275 s. 376.3071 ~~376.3071(12)~~ commits a felony of the third degree,
1276 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
1277 Section 5. Subsection (6) of section 376.305, Florida
1278 Statutes, is amended to read:
1279 376.305 Removal of prohibited discharges.—
1280 (6) The Legislature created the Abandoned Tank Restoration
1281 Program in response to the need to provide financial assistance
1282 for cleanup of sites that have abandoned petroleum storage
1283 systems. For purposes of this subsection, the term "abandoned
1284 petroleum storage system" means a ~~shall mean any~~ petroleum
1285 storage system that has not stored petroleum products for
1286 consumption, use, or sale since March 1, 1990. The department
1287 shall establish the Abandoned Tank Restoration Program to
1288 facilitate the restoration of sites contaminated by abandoned
1289 petroleum storage systems.
1290 (a) To be included in the program:
1291 1. An application must be submitted to the department by
1292 June 30, 1996, certifying that the system has not stored
1293 petroleum products for consumption, use, or sale at the facility
1294 since March 1, 1990.
1295 2. The owner or operator of the petroleum storage system
1296 when it was in service must have ceased conducting business
1297 involving consumption, use, or sale of petroleum products at
1298 that facility on or before March 1, 1990.
1299 3. The site is not otherwise eligible for the cleanup
1300 programs pursuant to s. 376.3071 or s. 376.3072.

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1301 (b) In order to be eligible for the program, petroleum
1302 storage systems from which a discharge occurred must be closed
1303 pursuant to ~~in accordance with~~ department rules before ~~prior to~~
1304 an eligibility determination. However, if the department
1305 determines that the owner of the facility cannot ~~is~~ financially
1306 ~~unable to~~ comply with the department's petroleum storage system
1307 closure requirements and all other eligibility requirements are
1308 met, the petroleum storage system closure requirements shall be
1309 waived. The department shall take into consideration the owner's
1310 net worth and the economic impact on the owner in making the
1311 determination of the owner's financial ability. The June 30,
1312 1996, application deadline shall be waived for owners who cannot
1313 ~~are~~ financially ~~unable to~~ comply.
1314 (c) Sites accepted in the program are ~~will be~~ eligible for
1315 site rehabilitation funding as provided in s. 376.3071
1316 ~~376.3071(12) or s. 376.30711, as appropriate~~.
1317 (d) The following sites are excluded from eligibility:
1318 1. Sites on property of the Federal Government;
1319 2. Sites contaminated by pollutants that are not petroleum
1320 products;
1321 3. Sites where the department has been denied site access;
1322 or
1323 4. Sites which are owned by a ~~any~~ person who had knowledge
1324 of the polluting condition when title was acquired unless the
1325 ~~that~~ person acquired title to the site after issuance of a
1326 notice of site eligibility by the department.

1327 (e) Participating sites are subject to a deductible as
1328 determined by rule, not to exceed $10,000.
1329
1330 ~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~
1331 person who has acquired title after ~~subsequent to~~ July 1, 1992,
1332 from the duty to establish by a preponderance of the evidence
1333 that he or she undertook, at the time of acquisition, all
1334 appropriate inquiry into the previous ownership and use of the
1335 property consistent with good commercial or customary practice
1336 in an effort to minimize liability, as required by s.
1337 376.308(1)(c).
1338 Section 6. Section 376.30713, Florida Statutes, is amended
1339 to read:
1340 376.30713 ~~Preapproved~~ Advanced cleanup.—
1341 (1) In addition to the legislative findings provided in s.
1342 376.3071 ~~376.30711~~, the Legislature finds and declares:
1343 (a) That the inability to conduct site rehabilitation in
1344 advance of a site's priority ranking pursuant to s.
1345 376.3071(5)(a) may substantially impede or prohibit property
1346 transactions or the proper completion of public works projects.
1347 (b) While the first priority of the state is to provide
1348 for protection of the public health, safety, and welfare, ~~the~~
1349 water resources ~~of the state~~, ~~human health,~~ and the environment,
1350 the viability of commerce is of equal importance to the state.
1351 (c) It is in the public interest and of substantial
1352 economic benefit to the state to provide an opportunity for site

1353 rehabilitation to be conducted on a limited basis at
1354 contaminated sites, in advance of the site's priority ranking,
1355 to facilitate property transactions or public works projects.
1356 (d) It is appropriate for a person who is ~~persons~~
1357 responsible for site rehabilitation to share the costs
1358 associated with managing and conducting ~~preapproved~~ advanced
1359 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced
1360 cleanup, and to mitigate the additional costs that will be
1361 incurred by the state in conducting site rehabilitation in
1362 advance of the site's priority ranking. Such cost sharing will
1363 result in more contaminated sites being cleaned up and greater
1364 environmental benefits to the state. ~~The provisions of~~ This
1365 section is ~~shall~~ only ~~be~~ available for sites eligible for
1366 restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This
1367 section is available for discharges eligible for restoration
1368 funding under the petroleum cleanup participation program for
1369 the state's cost share of site rehabilitation. Applications must
1370 ~~shall~~ include a cost-sharing commitment for this section in
1371 addition to the 25-percent-copayment requirement of the
1372 petroleum cleanup participation program. This section is not
1373 available for any discharge under a petroleum cleanup
1374 participation program where the 25-percent-copayment requirement
1375 of the petroleum cleanup participation program has been reduced
1376 or eliminated pursuant to s. 376.3071(13)(c).
1377 (2) The department may ~~is authorized to~~ approve an
1378 application for ~~preapproved~~ advanced cleanup at eligible sites,

1379 before ~~prior to~~ funding based on the site's priority ranking
1380 established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~
1381 ~~accordance with the provisions of~~ this section. Only the
1382 facility owner or operator or the person otherwise responsible
1383 for site rehabilitation qualifies ~~Persons who qualify~~ as an
1384 applicant under ~~the provisions of~~ this section ~~shall only~~
1385 ~~include the facility owner or operator or the person otherwise~~
1386 ~~responsible for site rehabilitation~~.
1387 (a) ~~Preapproved~~ Advanced cleanup applications may be
1388 submitted between May 1 and June 30 and between November 1 and
1389 December 31 of each fiscal year. Applications submitted between
1390 May 1 and June 30 shall be for the fiscal year beginning July 1.
1391 An application must ~~shall~~ consist of:
1392 1. A commitment to pay ~~no less than~~ 25 percent or more of
1393 the total cleanup cost deemed recoverable under ~~the provisions~~
1394 ~~of~~ this section along with proof of the ability to pay the cost
1395 share.
1396 2. A nonrefundable review fee of $250 to cover the
1397 administrative costs associated with the department's review of
1398 the application.
1399 3. A limited contamination assessment report.
1400 4. A proposed course of action.
1401
1402 The limited contamination assessment report must ~~shall~~ be
1403 sufficient to support the proposed course of action and to
1404 estimate the cost of the proposed course of action. ~~Any~~ Costs

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1405 incurred related to conducting the limited contamination
1406 assessment report are not refundable from the Inland Protection
1407 Trust Fund. Site eligibility under this subsection~~,~~ or any other
1408 provision of this section <u>is</u>~~, shall~~ not ~~constitute~~ an
1409 entitlement to ~~preapproved~~ advanced cleanup or continued
1410 restoration funding. The applicant shall certify to the
1411 department that the applicant has the prerequisite authority to
1412 enter into <u>an</u> ~~a preapproved~~ advanced cleanup contract with the
1413 department. <u>The</u> ~~This~~ certification <u>must</u> ~~shall~~ be submitted with
1414 the application.
1415 (b) The department shall rank the applications based on
1416 the percentage of cost-sharing commitment proposed by the
1417 applicant, with the highest ranking given to the applicant <u>who</u>
1418 ~~that~~ proposes the highest percentage of cost sharing. If the
1419 department receives applications that propose identical cost-
1420 sharing commitments and <u>that</u> ~~which~~ exceed the funds available to
1421 commit to all such proposals during the ~~preapproved~~ advanced
1422 cleanup application period, the department shall proceed to
1423 rerank those applicants. Those applicants submitting identical
1424 cost-sharing proposals which exceed funding availability <u>must</u>
1425 ~~shall~~ be so notified by the department and ~~shall be~~ offered the
1426 opportunity to raise their individual cost-share commitments, in
1427 a period ~~of time~~ specified in the notice. At the close of the
1428 period, the department shall proceed to rerank the applications
1429 <u>pursuant to</u> ~~in accordance with~~ this paragraph.
1430 (3)(a) Based on the ranking established under paragraph

1431 (2)(b) ~~and the funding limitations provided in subsection (4)~~,
1432 the department shall <u>begin</u> ~~commence~~ negotiation with such
1433 applicants. If the department and the applicant agree on the
1434 course of action, the department may enter into a contract with
1435 the applicant. The department <u>may</u> ~~is authorized to~~ negotiate the
1436 terms and conditions of the contract.
1437 (b) ~~Preapproved~~ Advanced cleanup <u>must</u> ~~shall~~ be conducted
1438 <u>pursuant to s. 376.3071(5)(b) and (6) and rules adopted under</u>
1439 <u>ss. 287.0595 and 376.3071</u> ~~under the provisions of ss.~~
1440 ~~376.3071(5)(b) and 376.30711~~. If the terms of the ~~preapproved~~
1441 advanced cleanup contract are not fulfilled, the applicant
1442 forfeits any right to future payment for any site rehabilitation
1443 work conducted under the contract.
1444 (c) The department's decision not to enter into <u>an</u> ~~a~~
1445 ~~preapproved~~ advanced cleanup contract with the applicant <u>is</u>
1446 ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ chapter 120. If the
1447 department <u>cannot</u> ~~is not able to~~ complete negotiation of the
1448 course of action and the terms of the contract within 60 days
1449 after <u>beginning</u> ~~commencing~~ negotiations, the department shall
1450 terminate negotiations with that applicant.
1451 (4) The department <u>may</u> ~~is authorized to~~ enter into
1452 contracts for a total of up to $15 million of ~~preapproved~~
1453 advanced cleanup work in each fiscal year. However, a facility
1454 may not be <u>approved</u> ~~preapproved~~ for more than $5 million of
1455 cleanup activity in each fiscal year. For the purposes of this
1456 section<u>,</u> the term "facility" <u>includes</u> ~~shall include~~, but <u>is</u> not

1457 ~~be~~ limited to, multiple site facilities such as airports, port
1458 facilities, and terminal facilities even though such enterprises
1459 may be treated as separate facilities for other purposes under
1460 this chapter.
1461 (5) All funds collected by the department pursuant to this
1462 section shall be deposited into the Inland Protection Trust Fund
1463 to be used as provided in this section.
1464 Section 7. Paragraph (a) of subsection (1) and subsections
1465 (3), (4), and (9) of section 376.30714, Florida Statutes, are
1466 amended to read:
1467 376.30714 Site rehabilitation agreements.—
1468 (1) In addition to the legislative findings provided in s.
1469 376.3071, the Legislature finds and declares:
1470 (a) The provisions of s. ~~ss.~~ 376.3071(5)(a) ~~and 376.30711~~
1471 have delayed cleanup of low-priority sites determined to be
1472 eligible for state funding under that section and ss. 376.305~~,~~
1473 ~~376.3071,~~ and 376.3072.
1474 (3) Free product attributable to a new discharge shall be
1475 removed to the extent practicable and pursuant to ~~in accordance~~
1476 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the
1477 expense of the owner, operator, or other responsible party. Free
1478 product attributable to existing contamination shall be removed
1479 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6)~~, or s.~~
1480 ~~376.30711(1)(b),~~ and department rules adopted pursuant thereto.
1481 (4) Beginning January 1, 1999, the department may ~~is~~
1482 ~~authorized to~~ negotiate and enter into site rehabilitation

1483 agreements with applicants at sites with eligible existing
1484 contamination at which a new discharge occurs. The site
1485 rehabilitation agreement must ~~shall~~ include, but is not ~~be~~
1486 limited to, allocation of the funding responsibilities of the
1487 department and the applicant for cleanup of the qualified site,
1488 establishment of a mechanism to guarantee the applicant's
1489 commitment to pay its agreed amount of site rehabilitation as
1490 set forth in the agreement, and establishment of the priority in
1491 which cleanup of the qualified site will occur. Under ~~any~~ such a
1492 negotiated site rehabilitation agreement, the applicant may not
1493 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
1494 attributable to the new discharge. However, the payment of ~~any~~
1495 applicable deductibles, copayments, or other program eligibility
1496 requirements under ss. 376.305, 376.3071, and 376.3072 shall
1497 continue to apply to the existing contamination and must be
1498 accounted for in the negotiated site rehabilitation agreement.
1499 The department may ~~is further authorized~~, pursuant to this
1500 section, ~~to preapprove or~~ conduct additional assessment
1501 activities at the site.
1502 (9) Site rehabilitation conducted at qualified sites shall
1503 be conducted pursuant to ~~under the provisions of~~ ss.
1504 376.3071(5)(b) and (6) ~~376.30711~~. If the terms of the agreement
1505 are not fulfilled by the applicant, the applicant forfeits the
1506 ~~any~~ right to continued funding for ~~any~~ site rehabilitation work
1507 under the agreement and is ~~shall be~~ subject to enforcement
1508 action by the department or local government to compel cleanup

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1509 of the new discharge.

1510 Section 8. Subsection (2) of section 376.3072, Florida
1511 Statutes, is amended to read:

1512 376.3072 Florida Petroleum Liability and Restoration
1513 Insurance Program.—

1514 (2)(a) An ~~Any~~ owner or operator of a petroleum storage
1515 system may become an insured in the restoration insurance
1516 program at a facility if ~~provided~~:

1517 1. A site at which an incident has occurred is ~~shall be~~
1518 eligible for restoration if the insured is a participant in the
1519 third-party liability insurance program or otherwise meets
1520 applicable financial responsibility requirements. After July 1,
1521 1993, the insured must also provide the required excess
1522 insurance coverage or self-insurance for restoration to achieve
1523 the financial responsibility requirements of 40 C.F.R. s.
1524 280.97, subpart H, not covered by paragraph (d).

1525 2. A site which had a discharge reported before ~~prior to~~
1526 January 1, 1989, for which notice was given pursuant to s.
1527 376.3071(10) ~~376.3071(9) or (12),~~ and which is ineligible for
1528 the third-party liability insurance program solely due to that
1529 discharge is ~~shall be~~ eligible for participation in the
1530 restoration program for an ~~any~~ incident occurring on or after
1531 January 1, 1989, pursuant to ~~in accordance with~~ subsection (3).
1532 Restoration funding for an eligible contaminated site will be
1533 provided without participation in the third-party liability
1534 insurance program until the site is restored as required by the

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1535 department or until the department determines that the site does
1536 not require restoration.
1537 3. Notwithstanding paragraph (b), a site where an
1538 application is filed with the department before ~~prior to~~ January
1539 1, 1995, where the owner is a small business under s.
1540 288.703(6), a state community college with less than 2,500 FTE,
1541 a religious institution as defined by s. 212.08(7)(m), a
1542 charitable institution as defined by s. 212.08(7)(p), or a
1543 county or municipality with a population of less than 50,000, is
1544 ~~shall be~~ eligible for up to $400,000 of eligible restoration
1545 costs, less a deductible of $10,000 for small businesses,
1546 eligible community colleges, and religious or charitable
1547 institutions, and $30,000 for eligible counties and
1548 municipalities, if ~~provided that~~:
1549 a. Except as provided in sub-subparagraph e., the facility
1550 was in compliance with department rules at the time of the
1551 discharge.
1552 b. The owner or operator has, upon discovery of a
1553 discharge, promptly reported the discharge to the department,
1554 and drained and removed the system from service, if necessary.
1555 c. The owner or operator has not intentionally caused or
1556 concealed a discharge or disabled leak detection equipment.
1557 d. The owner or operator proceeds to complete initial
1558 remedial action as specified in ~~defined by~~ department rules.
1559 e. The owner or operator, if required and if it has not
1560 already done so, applies for third-party liability coverage for

1561 the facility within 30 days <u>after</u> ~~of~~ receipt of an eligibility
1562 order issued by the department pursuant to this <u>subparagraph</u>
1563 ~~provision~~.
1564
1565 However, the department may consider in-kind services from
1566 eligible counties and municipalities in lieu of the $30,000
1567 deductible. The cost of conducting initial remedial action as
1568 defined by department rules <u>is</u> ~~shall be~~ an eligible restoration
1569 cost pursuant to this <u>subparagraph</u> ~~provision~~.
1570 4.a. By January 1, 1997, facilities at sites with existing
1571 contamination <u>must</u> ~~shall be required to~~ have methods of release
1572 detection to be eligible for restoration insurance coverage for
1573 new discharges subject to department rules for secondary
1574 containment. Annual storage system testing, in conjunction with
1575 inventory control, shall be considered to be a method of release
1576 detection until the later of December 22, 1998, or 10 years
1577 after the date of installation or the last upgrade. Other
1578 methods of release detection for storage tanks which meet such
1579 requirement are:
1580 (I) Interstitial monitoring of tank and integral piping
1581 secondary containment systems;
1582 (II) Automatic tank gauging systems; or
1583 (III) A statistical inventory reconciliation system with a
1584 tank test every 3 years.
1585 b. For pressurized integral piping systems, the owner or
1586 operator must use:

1587 (I) An automatic in-line leak detector with flow
1588 restriction meeting the requirements of department rules used in
1589 conjunction with an annual tightness or pressure test; or
1590 (II) An automatic in-line leak detector with electronic
1591 flow shut-off meeting the requirements of department rules.
1592 c. For suction integral piping systems, the owner or
1593 operator must use:
1594 (I) A single check valve installed directly below the
1595 suction pump if, provided there are no other valves between the
1596 dispenser and the tank; or
1597 (II) An annual tightness test or other approved test.
1598 d. Owners of facilities with existing contamination that
1599 install internal release detection systems pursuant to in
1600 accordance with sub-subparagraph a. shall permanently close
1601 their external groundwater and vapor monitoring wells pursuant
1602 to in accordance with department rules by December 31, 1998.
1603 Upon installation of the internal release detection system, such
1604 these wells must shall be secured and taken out of service until
1605 permanent closure.
1606 e. Facilities with vapor levels of contamination meeting
1607 the requirements of or below the concentrations specified in the
1608 performance standards for release detection methods specified in
1609 department rules may continue to use vapor monitoring wells for
1610 release detection.
1611 f. The department may approve other methods of release
1612 detection for storage tanks and integral piping which have at

1613 least the same capability to detect a new release as the methods
1614 specified in this subparagraph.
1615 (b)1. To be eligible to be certified as an insured
1616 facility, for discharges reported after January 1, 1989, the
1617 owner or operator must ~~shall~~ file an affidavit upon enrollment
1618 in the program. The affidavit must ~~shall~~ state that the owner or
1619 operator has read and is familiar with this chapter and the
1620 rules relating to petroleum storage systems and petroleum
1621 contamination site cleanup adopted pursuant to ss. 376.303 and
1622 376.3071 and that the facility is in compliance with this
1623 chapter and applicable rules adopted pursuant to s. 376.303.
1624 Thereafter, the facility's annual inspection report shall serve
1625 as evidence of the facility's compliance with department rules.
1626 The facility's certificate as an insured facility may be revoked
1627 only if the insured fails to correct a violation identified in
1628 an inspection report before a discharge occurs. The facility's
1629 certification may be restored when the violation is corrected as
1630 verified by a reinspection.
1631 2. Except as provided in paragraph (a), to be eligible to
1632 be certified as an insured facility, the applicant must
1633 demonstrate to the department that the applicant has financial
1634 responsibility for third-party claims and excess coverage, as
1635 required by this section and 40 C.F.R. s. 280.97(h), and that
1636 the applicant maintains such insurance during the applicant's
1637 participation as an insured facility.
1638 3. Should a reinspection of the facility be necessary to

1639 demonstrate compliance, the insured shall pay an inspection fee
1640 not to exceed $500 per facility to be deposited in the Inland
1641 Protection Trust Fund.
1642 4. Upon report of a discharge, the department shall issue
1643 an order stating that the site is eligible for restoration
1644 coverage unless the insured has intentionally caused or
1645 concealed a discharge or disabled leak detection equipment, has
1646 misrepresented facts in the affidavit filed pursuant to
1647 subparagraph 1., or cannot demonstrate that he or she has
1648 obtained and maintained the financial responsibility for third-
1649 party claims and excess coverage as required in subparagraph 2.
1650
1651 This paragraph does not ~~Nothing contained herein shall~~ prevent
1652 the department from assessing civil penalties for noncompliance
1653 pursuant to this subsection ~~as provided herein~~.
1654 (c) A lender that has loaned money to a participant in the
1655 Florida Petroleum Liability and Restoration Insurance Program
1656 and has held a mortgage lien, security interest, or ~~any~~ lien
1657 rights on the site primarily to protect the lender's right to
1658 convert or liquidate the collateral in satisfaction of the debt
1659 secured, or a financial institution which serves as a trustee
1660 for an insured in the program for the purpose of site
1661 rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup
1662 of the site~~,~~ if the lender forecloses the lien or accepts a deed
1663 in lieu of foreclosure on that property and acquires title, and
1664 as long as the following has occurred, as applicable:

1665 1. The owner or operator provided the lender with proof
1666 that the facility is eligible for the restoration insurance
1667 program at the time of the loan or before the discharge
1668 occurred.
1669 2. The financial institution or lender ~~completes site~~
1670 ~~rehabilitation and seeks reimbursement pursuant to s.~~
1671 ~~376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation
1672 pursuant to s. 376.3071 ~~376.30711, as appropriate~~.
1673 3. The financial institution or lender did not engage in
1674 management activities at the site before ~~prior to~~ foreclosure
1675 and does not operate the site or otherwise engage in management
1676 activities after foreclosure, except to comply with
1677 environmental statutes or rules or to prevent, abate, or
1678 remediate a discharge.
1679 (d)1. With respect to eligible incidents reported to the
1680 department before ~~prior to~~ July 1, 1992, the restoration
1681 insurance program shall provide up to $1.2 million of
1682 restoration for each incident and shall have an annual aggregate
1683 limit of $2 million of restoration per facility.
1684 2. For any site at which a discharge is reported on or
1685 after July 1, 1992, and for which restoration coverage is
1686 requested, the department shall pay for restoration in
1687 accordance with the following schedule:
1688 a. For discharges reported to the department from July 1,
1689 1992, to June 30, 1993, the department shall pay up to $1.2
1690 million of eligible restoration costs, less a $1,000 deductible

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1691 per incident.
1692 b. For discharges reported to the department from July 1,
1693 1993, to December 31, 1993, the department shall pay up to $1.2
1694 million of eligible restoration costs, less a $5,000 deductible
1695 per incident. However, if, <u>before</u> ~~prior to~~ the date the
1696 discharge is reported and by September 1, 1993, the owner or
1697 operator can demonstrate financial responsibility in effect in
1698 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
1699 under sub-subparagraph c., the deductible will be $500. The $500
1700 deductible shall apply for a period of 1 year from the effective
1701 date of a policy or other form of financial responsibility
1702 obtained and in effect by September 1, 1993.
1703 c. For discharges reported to the department from January
1704 1, 1994, to December 31, 1996, the department shall pay up to
1705 $400,000 of eligible restoration costs, less a deductible of
1706 $10,000.
1707 d. For discharges reported to the department from January
1708 1, 1997, to December 31, 1998, the department shall pay up to
1709 $300,000 of eligible restoration costs, less a deductible of
1710 $10,000.
1711 e. Beginning January 1, 1999, ~~no~~ restoration coverage <u>may</u>
1712 <u>not</u> ~~shall~~ be provided.
1713 f. In addition, a supplemental deductible shall be added
1714 as follows:
1715 (I) A supplemental deductible of $5,000 if the owner or
1716 operator fails to report a suspected release within 1 working

1717 day after discovery.
1718 (II) A supplemental deductible of $10,000 if the owner or
1719 operator, within 3 days after discovery of an actual new
1720 discharge, fails to take steps to test or empty the storage
1721 system and complete such activity within 7 days.
1722 (III) A supplemental deductible of $25,000 if the owner or
1723 operator, after testing or emptying the storage system, fails to
1724 proceed within 24 hours thereafter to abate the known source of
1725 the discharge or to begin free product removal relating to an
1726 actual new discharge and fails to complete abatement within 72
1727 hours, although free product recovery may be ongoing.
1728 (e) The following are not eligible to participate in the
1729 Petroleum Liability and Restoration Insurance Program:
1730 1. Sites owned or operated by the Federal Government
1731 during the time the facility was in operation.
1732 2. Sites where the owner or operator has denied the
1733 department reasonable site access.
1734 3. Any third-party claims relating to damages caused by
1735 discharges discovered before ~~prior to~~ January 1, 1989.
1736 4. Any incidents discovered before ~~prior to~~ January 1,
1737 1989~~, are not eligible to participate in the restoration~~
1738 ~~insurance program~~. However, this exclusion does ~~shall~~ not ~~be~~
1739 ~~construed to~~ prevent a new incident at the same location from
1740 participation in the restoration insurance program if the owner
1741 or operator is otherwise eligible. This exclusion does ~~shall~~ not
1742 affect eligibility for participation in the Early Detection

1743 Incentive ~~EDI~~ Program.
1744
1745 Sites meeting the criteria of this subsection for which a site
1746 rehabilitation completion order was issued before ~~prior to~~ June
1747 1, 2008, do not qualify for the 2008 increase in site
1748 rehabilitation funding assistance and are bound by the pre-June
1749 1, 2008, limits. Sites meeting the criteria of this subsection
1750 for which a site rehabilitation completion order was not issued
1751 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
1752 have previously transitioned to nonstate-funded cleanup status,
1753 may continue state-funded cleanup pursuant to s. 376.3071(6)
1754 ~~376.30711~~ until a site rehabilitation completion order is issued
1755 or the increased site rehabilitation funding assistance limit is
1756 reached, whichever occurs first. ~~At no time shall expenses~~
1757 ~~incurred outside the preapproved site rehabilitation program~~
1758 ~~under s. 376.30711 be reimbursable~~.
1759 Section 9. Subsections (1) and (4) of section 376.3073,
1760 Florida Statutes, are amended to read:
1761 376.3073 Local programs and state agency programs for
1762 control of contamination.—
1763 (1) The department shall, to the greatest extent possible
1764 and cost-effective, contract with local governments to provide
1765 for the administration of its departmental responsibilities
1766 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)
1767 ~~(1), (n), 376.30711~~, 376.3072, and 376.3077 through locally
1768 administered programs. The department may also contract with

1769 state agencies to carry out the restoration activities
1770 authorized pursuant to ss. 376.3071, 376.3072, and 376.305~~, and~~
1771 ~~376.30711~~. However, ~~no~~ such a contract may not ~~shall~~ be entered
1772 into unless the local government or state agency is deemed
1773 capable of carrying out such responsibilities to the
1774 department's satisfaction.
1775 (4) Under no circumstances shall the cleanup criteria
1776 employed in locally administered programs or state agency
1777 programs or pursuant to local ordinance be more stringent than
1778 the criteria established by the department pursuant to s.
1779 376.3071(5) or (6) ~~s. 376.30711~~.
1780 Section 10. Subsections (4) and (5) of section 376.3075,
1781 Florida Statutes, are amended to read:
1782 376.3075 Inland Protection Financing Corporation.—
1783 (4) The corporation may enter into one or more service
1784 contracts with the department to provide services to the
1785 department in connection with financing the functions and
1786 activities provided in ss. 376.30-376.317. The department may
1787 enter into one or more such service contracts with the
1788 corporation and provide for payments under such contracts
1789 pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o)~~, subject to annual
1790 appropriation by the Legislature. The proceeds from such service
1791 contracts may be used for the corporation's administrative costs
1792 and expenses after payments as set forth in subsection (5). Each
1793 service contract may have a term of up to 20 years. Amounts
1794 annually appropriated and applied to make payments under such

1795 service contracts may not include any funds derived from
1796 penalties or other payments received from any property owner or
1797 private party, including payments received under s.
1798 <u>376.3071(7)(b)</u> ~~376.3071(6)(b)~~. In compliance with s. 287.0641
1799 and other applicable provisions of law, the obligations of the
1800 department under such service contracts do not constitute a
1801 general obligation of the state or a pledge of the faith and
1802 credit or taxing power of the state <u>and</u> ~~nor may~~ such obligations
1803 <u>are not</u> ~~be construed in any manner as~~ an obligation of the State
1804 Board of Administration or entities for which it invests funds,
1805 other than the department as provided in this section, but are
1806 payable solely from amounts available in the Inland Protection
1807 Trust Fund, subject to annual appropriation. In compliance with
1808 this subsection and s. 287.0582, the service contract must
1809 expressly include the following statement: "The State of
1810 Florida's performance and obligation to pay under this contract
1811 is contingent upon an annual appropriation by the Legislature."
1812 (5) The corporation may issue and incur notes, bonds,
1813 certificates of indebtedness, or other obligations or evidences
1814 of indebtedness payable from and secured by amounts payable to
1815 the corporation by the department under a service contract
1816 entered into pursuant to subsection (4) for the purpose of
1817 financing the rehabilitation of petroleum contamination sites
1818 pursuant to ss. 376.30-376.317. The term of any such note, bond,
1819 certificate of indebtedness, or other obligation or evidence of
1820 indebtedness may not have a financing term that exceeds 15

1821 years. The corporation may select its financing team and issue
1822 its obligations through competitive bidding or negotiated
1823 contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
1824 the corporation does not constitute a debt or obligation of the
1825 state or a pledge of the faith and credit or taxing power of the
1826 state~~,~~ but is payable from and secured by payments made by the
1827 department under the service contract pursuant to s.
1828 376.3071(4)(n) ~~376.3071(4)(o)~~.
1829 Section 11. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: State Affairs Committee

2 Representative Rooney offered the following:

3

4 **Amendment**

5 Remove lines 498-499 and insert:

6 section or s. 287.0595.

7

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ___

---

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Rooney offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 20 and 21, insert:
6 Section 1. Subsection (4) of section 287.0595, Florida
7 Statutes, is amended to read:
8 287.0595 Pollution response action contracts; department
9 rules.—
10 ~~(4) This section does not apply to contracts which must be~~
11 ~~negotiated under s. 287.055.~~
12
13 ---
14 **T I T L E A M E N D M E N T**
15 Remove line 3 and insert:
16 contamination sites; amending s. 287.0595, F.S.; removing a
17 provision exempting pollution response action contracts from the

18 Consultants Competitive Negotiation Act; amending s. 376.3071,

19 F.S.;

20

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ___

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Rooney offered the following:
3
4 **Amendment**
5 Remove lines 621-624 and insert:
6 the date on which ~~that~~ the discharge occurred.
7 (c) Audits.—
8 1. The department is authorized to perform financial and
9 technical audits in order to verify site restoration costs and
10 ensure compliance with this chapter. The department shall seek
11 recovery of any overpayments based on the findings of these
12 audits. The department must commence any audit within 5 years
13 after the date of payment for costs incurred at a facility,
14 except in cases where the department alleges specific facts
15 indicating fraud.
16 2. Upon determination by the department that any portion
17 of costs which have been paid from the fund are disallowed, the

18 department shall give written notice to the recipient of the
19 payment setting forth with specificity the allegations of fact
20 which justify the department's proposed action and ordering
21 repayment of disallowed costs within 60 days of notification of
22 the recipient.
23 3. If the recipient does not make payment to the
24 department within 60 days of receipt of such notice, the
25 department shall seek recovery in a court of competent
26 jurisdiction to recover any overpayments, unless the department
27 finds the amount involved too small or the likelihood of
28 recovery too uncertain.
29 4. In addition to the amount of any overpayment, the
30 recipient shall be liable to the department for interest of 1
31 percent per month or the prime rate, whichever is less, on the
32 amount of overpayment, from the date of overpayment by the
33 department until the recipient satisfies the department's
34 request for repayment pursuant to this paragraph. The accrual of
35 interest shall be tolled during the pendency of any litigation.
36 (d) Any claims that accrued under the former reimbursement
37 or preapproval programs are expressly preserved.
38

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Rooney offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 1395-1453 and insert:
6 share. An applicant proposing that the department enter into a
7 performance-based contract for the cleanup of at least 20 sites
8 may use the following as its cost share commitment: a commitment
9 to pay; a demonstrated cost savings to the department; or any
10 combination of the two. For applications relying on a
11 demonstration of a cost savings, the applicant, in conjunction
12 with its proposed agency term contractor, shall establish and
13 provide in its application the percentage of cost savings, in
14 the aggregate, that is being provided to the department for
15 cleanup of the sites under its application compared to the cost
16 of cleanup of those same sites using the current rates provided
17 to the department by that proposed agency term contractor. The

18 department shall determine if the cost savings demonstration is
19 acceptable, and such determination is not subject to chapter
20 120.
21 2. A nonrefundable review fee of $250 to cover the
22 administrative costs associated with the department's review of
23 the application.
24 3. A limited contamination assessment report.
25 4. A proposed course of action.
26
27 The limited contamination assessment report must ~~shall~~ be
28 sufficient to support the proposed course of action and to
29 estimate the cost of the proposed course of action. ~~Any~~ Costs
30 incurred related to conducting the limited contamination
31 assessment report are not refundable from the Inland Protection
32 Trust Fund. Site eligibility under this subsection~~,~~ or any other
33 provision of this section is~~, shall~~ not ~~constitute~~ an
34 entitlement to ~~preapproved~~ advanced cleanup or continued
35 restoration funding. The applicant shall certify to the
36 department that the applicant has the prerequisite authority to
37 enter into an ~~a preapproved~~ advanced cleanup contract with the
38 department. The ~~This~~ certification must ~~shall~~ be submitted with
39 the application.
40 (b) The department shall rank the applications based on
41 the percentage of cost-sharing commitment proposed by the
42 applicant, with the highest ranking given to the applicant who
43 ~~that~~ proposes the highest percentage of cost sharing. If the

44 department receives applications that propose identical cost-
45 sharing commitments and that ~~which~~ exceed the funds available to
46 commit to all such proposals during the ~~preapproved~~ advanced
47 cleanup application period, the department shall proceed to
48 rerank those applicants. Those applicants submitting identical
49 cost-sharing proposals that ~~which~~ exceed funding availability
50 must ~~shall~~ be so notified by the department and ~~shall be~~ offered
51 the opportunity to raise their individual cost-share
52 commitments, in a period ~~of time~~ specified in the notice. At the
53 close of the period, the department shall proceed to rerank the
54 applications pursuant to ~~in accordance with~~ this paragraph.
55 (3)(a) Based on the ranking established under paragraph
56 (2)(b) ~~and the funding limitations provided in subsection (4)~~,
57 the department shall begin ~~commence~~ negotiation with such
58 applicants. If the department and the applicant agree on the
59 course of action, the department may enter into a contract with
60 the applicant. The department may ~~is authorized to~~ negotiate the
61 terms and conditions of the contract.
62 (b) ~~Preapproved~~ Advanced cleanup shall be conducted
63 pursuant to s. 376.3071(5)(b) and (6) and rules adopted under
64 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
65 ~~376.3071(5)(b) and 376.30711~~. If the terms of the ~~preapproved~~
66 advanced cleanup contract are not fulfilled, the applicant
67 forfeits any right to future payment for any site rehabilitation
68 work conducted under the contract.

69 (c) The department's decision not to enter into an ~~a~~
70 ~~preapproved~~ advanced cleanup contract with the applicant is
71 ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ chapter 120. If the
72 department cannot ~~is not able to~~ complete negotiation of the
73 course of action and the terms of the contract within 60 days
74 after beginning ~~commencing~~ negotiations, the department shall
75 terminate negotiations with that applicant.
76 (4) The department may ~~is authorized to~~ enter into
77 contracts for a total of up to $15 million of ~~preapproved~~
78 advanced cleanup work in each fiscal year. However, a facility
79 or an applicant that bundles multiple sites as specified in
80 subparagraph (2)(a)1.
81
82
83
84 ---
85 **T I T L E A M E N D M E N T**
86 Remove lines 14-15 and insert:
87 preapproved site rehabilitation; amending s. 376.30713, F.S.;
88 providing that an applicant can use a demonstration of a cost
89 savings if bundling multiple sites for meeting the required cost
90 share commitment; amending ss. 376.301, 376.302, 376.305,
91 376.30714, 376.3072,
92

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7115 PCB GVOPS 14-06 OGSR/Active Investigations of Testing Impropriety/DOE
SPONSOR(S): Government Operations Subcommittee, Cummings
TIED BILLS: **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

It is unlawful for anyone to knowingly and willfully violate test security rules set by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification, or administered by school districts. A district school superintendent or president of a public or nonpublic postsecondary educational institution must cooperate with the Commissioner of Education in any investigation concerning the administration of a test administered pursuant to state statute or rule.

Current law provides a public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety. Specifically, the identity of a school or postsecondary educational institution, personal identifying information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconducted are confidential and exempt from public record requirements. The information remains confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active.

The bill reenacts the public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act
The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Test Security
It is unlawful for anyone to knowingly and willfully violate test security rules set by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification, or administered by school districts.[4] Violations include, in part, giving examinees access to test questions prior to testing; copying reproducing, or using in any manner inconsistent with test security rules all or any portion of any secure test booklet; coaching examinees during testing; or making answer keys available to examinees.[5] A district school superintendent or president of a public or nonpublic postsecondary educational institution must cooperate with the Commissioner of Education in any investigation concerning the administration of a test administered pursuant to state statute or rule.[6]

Public Record Exemption under Review
In 2009, the Legislature created a public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety.[7] Specifically, the identity of a school or postsecondary educational institution, personal

[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Section 1008.24(1), F.S.
[55] *See* s. 1008.24(1)(a)-(g), F.S.
[6] Section 1008.24(4)(a), F.S.
[7] Chapter 2009-143, L.O.F.; codified as s. 1008.21(3)(b), F.S., however, the section has since been amended and the public record exemption can now be found at paragraph (4)(b).

identifying information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconducted are confidential and exempt[8] from public record requirements.

The information remains confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active. An investigation is deemed concluded upon:

- A finding that no impropriety has occurred;
- The conclusion of any resulting preliminary investigation;
- The completion of any resulting investigation by a law enforcement agency; or
- Referral of the matter to an employer who has the authority to take disciplinary action against an individual who is suspected of a testing impropriety.[9]

An investigation is considered active so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future.[10]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[11]

During the 2013 interim, subcommittee staff met with staff of the Department of Education as part of the Open Government Sunset Review process.[12] Staff of the Department of Education recommended reenactment of the public record exemption.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety. The bill also makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 1008.24, F.S., to save from repeal the public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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[8] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).
[9] Section 1008.24(4)(b), F.S.
[10] *Id.*
[11] *Id.*
[12] Meeting on December 18, 2013, between House staff of the Government Operations Subcommittee, K-12 Subcommittee, and Choice & Innovation Subcommittee and staff of the Department of Education.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not 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

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 1008.24, F.S., relating
4 to an exemption from public records requirements for
5 certain information held by the Department of
6 Education during active investigations of allegations
7 of testing impropriety; saving the exemption from
8 repeal under the Open Government Sunset Review Act;
9 providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (b) of subsection (4) of section
14 1008.24, Florida Statutes, is amended to read:
15 1008.24 Test administration and security; public records
16 exemption.—
17 (4)
18 (b) The identity of a school or postsecondary educational
19 institution, personal identifying ~~the personally identifiable~~
20 information of any personnel of any school district or
21 postsecondary educational institution, or any specific
22 allegations of misconduct obtained or reported pursuant to an
23 investigation conducted by the Department of Education of a
24 testing impropriety are confidential and exempt from s.
25 119.07(1) and s. 24(a), Art. I of the State Constitution until
26 the conclusion of the investigation or until such time as the

27 investigation ceases to be active. For the purpose of this
28 paragraph, an investigation is ~~shall be~~ deemed concluded upon a
29 finding that no impropriety has occurred, upon the conclusion of
30 any resulting preliminary investigation pursuant to s. 1012.796,
31 upon the completion of any resulting investigation by a law
32 enforcement agency, or upon the referral of the matter to an
33 employer who has the authority to take disciplinary action
34 against an individual who is suspected of a testing impropriety.
35 For the purpose of this paragraph, an investigation is ~~shall be~~
36 considered active so long as it is ongoing and there is a
37 reasonable, good faith anticipation that an administrative
38 finding will be made in the foreseeable future. ~~This paragraph~~
39 ~~is subject to the Open Government Sunset Review Act in~~
40 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~
41 ~~2014, unless reviewed and saved from repeal through reenactment~~
42 ~~by the Legislature.~~
43 Section 2. This act shall take effect October 1, 2014.

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

HB 7119

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7119 PCB GVOPS 14-07 OGSR/K-12 Education Records
SPONSOR(S): Government Operations Subcommittee, Combee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Family Education Rights and Privacy Act (FERPA) is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personal identifying information contained in the records. When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student. Educational agencies and institutions must comply with FERPA as a condition to receiving federal education funds.

Current law provides a public record exemption for K-12 education records held by educational agencies and institutions and requires that such records be protected in accordance with FERPA. Specifically, education records as defined in FERPA are confidential and exempt from public record requirements. An agency or institution may not release a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by FERPA. Education records may be released to the Auditor General or the Office of Program Policy Analysis and Government Accountability (office) in the furtherance of performing their official duties and responsibilities; however, the Auditor General and the office must maintain the records in accordance with FERPA. In addition, and in accordance with FERPA, an agency or institution may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies.

The bill reenacts the public record exemption for K-12 education records held by an educational agency or institution, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act
The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Federal Family Educational Rights and Privacy Act
The Family Education Rights and Privacy Act[4] (FERPA) is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personal identifying information[5] contained in the records.[6] When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (eligible student).[7]

Educational agencies and institutions[8] must comply with FERPA as a condition to receiving federal

[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] 20 U.S.C. s. 1232g and 34 C.F.R. part 99.
[5] FERPA defines the term "personally identifiable information" to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student's family; the student's social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3.
[6] 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99. In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.
[7] 20 U.S.C. s. 1232g(d); 34 C.F.R. ss. 99.3 (definition of "eligible student") and 99.5(a).
[8] FERPA defines the term "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. s. 1232g(a)(3). This includes educational institutions that provide instructional or educational services

education funds.[9] An educational agency or institution that receives federal education funds must annually notify parents and eligible students of their rights under FERPA.[10] In addition, such agency or institution:

- May not deny the parents the right to inspect and review the education records of their children;[11]
- Must provide parents an opportunity for a hearing to challenge the content of their student's education records;[12] and
- May not release education records or personal identifying information of students without the written consent of their parents, except in certain instances. This does not apply to the release of directory information.[13]

FERPA defines the term "education records" to mean those records, files, documents, and other materials that contain information directly related to a student, and are maintained by an educational agency or institution or by a person acting for such agency or institution.[14] "Directory information" about a student includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended by the student.[15]

Public Record Exemption under Review

Current law provides a public record exemption for K-12 education records held by educational agencies and institutions[16] and requires that such records be protected in accordance with FERPA. Specifically, education records as defined in FERPA are confidential and exempt[17] from public record requirements.

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and educational agencies that are authorized to control and direct postsecondary institutions or public elementary or secondary schools. 34 C.F.R. s. 99.1.

[9] 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. s. 99.1.

[10] 20 U.S.C. s. 1232g(e); 34 C.F.R. s. 99.7(a).

[11] 20 U.S.C. s. 1232g(a)(1).

[12] 20 U.S.C. s. 1232g(a)(2).

[13] 20 U.S.C. s. 1232g(b)(1) and (2).

[14] The term "education records" does not include:

- Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto that are in the sole possession of the maker thereof and that are not accessible or revealed to any person except a substitute;
- Records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business that relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- Records on a student who is 18 years of age or older, or is attending an institution or postsecondary education, that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment.

Id. at s. 1232g(a)(4).

[15] *Id.* at s. 1232g(a)(5).

[16] Section 1002.22(1)(a), F.S., defines the term "agency" to mean any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions as defined in chapter 1002, F.S. Section 1002.22(1)(b), F.S., defines the term "institution" to mean any public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), and (4), F.S.

[17] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

An agency or institution may not release a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by FERPA.[18] Education records may be released to the Auditor General or the Office of Program Policy Analysis and Government Accountability (office) in the furtherance of performing their official duties and responsibilities; however, the Auditor General and the office must maintain the records in accordance with FERPA.[19]

In accordance with FERPA, an agency or institution may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies. Such information is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services. As such it is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile.[20]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[21]

During the 2013 interim, subcommittee staff met with staff of the Department of Education as part of the Open Government Sunset Review process.[22] According to staff of the Department of Education, the public record exemption is necessary in order to maintain compliance with FERPA and to continue receiving federal funding.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for K-12 education records held by an educational agency or institution. The bill also removes superfluous language.

B. SECTION DIRECTORY:

Section 1 amends s. 1002.221, F.S., to save from repeal the public record exemption for K-12 education records held by an educational agency or institution.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[18] Section 1002.221(2)(a), F.S.
[19] *Id.*
[20] Section 1002.221(2)(b), F.S.
[21] Section 1002.221(3), F.S.
[22] Meeting on December 18, 2013, between House staff of the Government Operations Subcommittee, K-12 Subcommittee, and Choice & Innovation Subcommittee and staff of the Department of Education.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 1002.221, F.S.,
4 relating to an exemption from public records
5 requirements for K-12 education records; saving the
6 exemption from repeal under the Open Government Sunset
7 Review Act; deleting provisions to conform; providing
8 an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 1002.221, Florida Statutes, is amended
13 to read:
14 1002.221 K-12 education records; public records
15 exemption.—
16 (1) Education records, as defined in the Family
17 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,
18 and the federal regulations issued pursuant thereto, are
19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
20 of the State Constitution.
21 (2)(a) An agency or institution, as defined in s. 1002.22
22 ~~1002.22(1)(a), or a public school, center, institution, or other~~
23 ~~entity that is part of Florida's education system under s.~~
24 ~~1000.04(1), (3), or (4)~~, may not release a student's education
25 records without the written consent of the student or parent to
26 any individual, agency, or organization, except in accordance

27 with and as permitted by the FERPA.
28 (b) Education records released by an agency or
29 institution, as defined in s. 1002.22 ~~1002.22(1)(a), or by a~~
30 ~~public school, center, institution, or other entity that is part~~
31 ~~of Florida's education system under s. 1000.04(1), (3), or (4)~~,
32 to the Auditor General or the Office of Program Policy Analysis
33 and Government Accountability, which are necessary for such
34 agencies to perform their official duties and responsibilities,
35 must ~~shall~~ be used and maintained by the Auditor General and the
36 Office of Program Policy Analysis and Government Accountability
37 in accordance with the FERPA.
38 (c)~~(b)~~ In accordance with FERPA and the federal
39 regulations issued pursuant to FERPA, an agency or institution,
40 as defined in s. 1002.22, ~~or a public school, center,~~
41 ~~institution, or other entity that is part of Florida's education~~
42 ~~system under s. 1000.04(1), (3), or (4)~~ may release a student's
43 education records without written consent of the student or
44 parent to parties to an interagency agreement among the
45 Department of Juvenile Justice, the school, law enforcement
46 authorities, and other signatory agencies. ~~The purpose of such~~
47 ~~an agreement and information sharing is to reduce juvenile~~
48 ~~crime, especially motor vehicle theft, by promoting cooperation~~
49 ~~and collaboration and the sharing of appropriate information in~~
50 ~~a joint effort to improve school safety, to reduce truancy and~~
51 ~~in-school and out-of-school suspensions, and to support~~
52 ~~alternatives to in-school and out-of-school suspensions and~~

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

53 ~~expulsions, which provide structured and well-supervised~~
54 ~~educational programs supplemented by a coordinated overlay of~~
55 ~~other appropriate services designed to correct behaviors that~~
56 ~~lead to truancy, suspensions, and expulsions and that support~~
57 ~~students in successfully completing their education.~~ Information
58 provided in furtherance of an interagency agreement is intended
59 solely for use in determining the appropriate programs and
60 services for each juvenile or the juvenile's family, or for
61 coordinating the delivery of the programs and services, and as
62 such is inadmissible in any court proceeding before a
63 dispositional hearing unless written consent is provided by a
64 parent or other responsible adult on behalf of the juvenile.
65 ~~(3) This section is subject to the Open Government Sunset~~
66 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
67 ~~on October 2, 2014, unless reviewed and saved from repeal~~
68 ~~through reenactment by the Legislature.~~
69 Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7121 PCB GVOPS 14-08 OGSR/Postsecondary Education Records
SPONSOR(S): Government Operations Subcommittee, Ahern
TIED BILLS: **IDEN./SIM. BILLS:** SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Family Education Rights and Privacy Act (FERPA) is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personal identifying information contained in the records. When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student. Educational agencies and institutions must comply with FERPA as a condition to receiving federal education funds.

Each public postsecondary educational institution may prescribe the content and custody of records it maintains on its students and applicants for admission.

Current law provides a public record exemption for public postsecondary education records and applicant records held by a public postsecondary educational institution. For purposes of the public record exemption, applicant records are records that are directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at such institution, and that are maintained by such institution.

A public postsecondary educational institution may not release a student's education records without the written consent of the student, except in accordance with and as permitted by FERPA. Education records may be released to the Auditor General or the Office of Program Policy Analysis and Government Accountability (office) in the furtherance of performing their official duties and responsibilities; however, the Auditor General and the office must maintain the records in accordance with FERPA.

The bill reenacts the public record exemption for education and applicant records held by a public postsecondary educational institution, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Federal Family Educational Rights and Privacy Act

The Family Education Rights and Privacy Act[4] (FERPA) is a federal law that grants parents the right to inspect, review, and challenge the content of their child's education records and, subject to certain exceptions, control the disclosure of education records or personal identifying information[5] contained in the records.[6] When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (eligible student).[7]

Educational agencies and institutions[8] must comply with FERPA as a condition to receiving federal

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

[4] 20 U.S.C. s. 1232g and 34 C.F.R. part 99.

[5] FERPA defines the term "personally identifiable information" to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student's family; the student's social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3.

[6] 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99. In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.

[7] 20 U.S.C. s. 1232g(d); 34 C.F.R. ss. 99.3 (definition of "eligible student") and 99.5(a).

[8] FERPA defines the term "educational agency or institution" to mean any public or private agency or institution that receives federal education funding. 20 U.S.C. s. 1232g(a)(3). This includes educational institutions that provide instructional or educational services

education funds.[9] An educational agency or institution that receives federal education funds must annually notify parents and eligible students of their rights under FERPA.[10] In addition, such agency or institution:

- May not deny the parents the right to inspect and review the education records of their children;[11]
- Must provide parents an opportunity for a hearing to challenge the content of their student's education records;[12] and
- May not release education records or personal identifying information of students without the written consent of their parents, except in certain instances. This does not apply to the release of directory information.[13]

FERPA defines the term "education records" to mean those records, files, documents, and other materials that contain information directly related to a student, and are maintained by an educational agency or institution or by a person acting for such agency or institution.[14] "Directory information" about a student includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended by the student.[15]

Each public postsecondary educational institution may prescribe the content and custody of records it maintains on its students and applicants for admission.[16]

Public Record Exemption under Review

Current law provides a public record exemption for public postsecondary education records, as defined in FERPA, held by a public postsecondary educational institution. In addition, applicant records are confidential and exempt[17] from public record requirements.[18] For purposes of the public record

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and educational agencies that are authorized to control and direct postsecondary institutions or public elementary or secondary schools. 34 C.F.R. s. 99.1.

[9] 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. s. 99.1.

[10] 20 U.S.C. s. 1232g(e); 34 C.F.R. s. 99.7(a).

[11] 20 U.S.C. s. 1232g(a)(1).

[12] 20 U.S.C. s. 1232g(a)(2).

[13] 20 U.S.C. s. 1232g(b)(1) and (2).

[14] The term "education records" does not include:

Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto that are in the sole possession of the maker thereof and that are not accessible or revealed to any person except a substitute;

- Records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business that relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- Records on a student who is 18 years of age or older, or is attending an institution or postsecondary education, that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment.

Id. at s. 1232g(a)(4).

[15] *Id.* at s. 1232g(a)(5).

[16] Section 1006.52(1), F.S.

[17] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

[18] Section 1006.52(1), F.S.

exemption, applicant records are records that are directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at such institution, and that are maintained by such institution.[19]

A public postsecondary educational institution may not release a student's education records without the written consent of the student, except in accordance with and as permitted by FERPA. Education records may be released to the Auditor General or the Office of Program Policy Analysis and Government Accountability (office) in the furtherance of performing their official duties and responsibilities; however, the Auditor General and the office must maintain the records in accordance with FERPA.[20]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[21]

During the 2013 interim, subcommittee staff met with staff of the Department of Education as part of the Open Government Sunset Review process.[22] According to staff of the Department of Education, the public record exemption is necessary in order to maintain compliance with FERPA and to continue receiving federal funding.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for education records and applicant records held by a public postsecondary educational institution. The bill also makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 1006.52, F.S., to save from repeal the public record exemption for education and applicant records held by a public postsecondary educational institution.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[19] Section 1006.52(1)(a) and (b), F.S.
[20] Section 1006.52(2), F.S.
[21] Section 1006.52(3), F.S.
[22] Meeting on December 18, 2013, between House staff of the Government Operations Subcommittee, K-12 Subcommittee, and Choice & Innovation Subcommittee and staff of the Department of Education.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1006.52, F.S., relating to an exemption from public records requirements for postsecondary education records and applicant records; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 1006.52, Florida Statutes, is amended to read:

1006.52 Education records and applicant records; public records exemption.—

(1) Each public postsecondary educational institution may prescribe the content and custody of records that the institution may maintain on its students and applicants for admission. A student's education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, and applicant records are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this subsection, applicant records are ~~shall be considered to be~~ records that are:

(a) Directly related to an applicant for admission to a

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

27 public postsecondary educational institution who has not been in
28 attendance at the institution; and
29 (b) Maintained by a public postsecondary educational
30 institution or by a party acting on behalf of the public
31 postsecondary educational institution.
32 (2)(a) A public postsecondary educational institution may
33 not release a student's education records without the written
34 consent of the student to any individual, agency, or
35 organization, except in accordance with and as permitted by the
36 FERPA.
37 (b) Education records released by public postsecondary
38 educational institutions to the Auditor General or the Office of
39 Program Policy Analysis and Government Accountability, which are
40 necessary for such agencies to perform their official duties and
41 responsibilities, must ~~shall~~ be used and maintained by the
42 Auditor General and the Office of Program Policy Analysis and
43 Government Accountability in accordance with the FERPA.
44 ~~(3) This section is subject to the Open Government Sunset~~
45 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
46 ~~on October 2, 2014, unless reviewed and saved from repeal~~
47 ~~through reenactment by the Legislature.~~
48 Section 2. This act shall take effect October 1, 2014.

HB 7143

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7143 PCB GVOPS 14-09 OGSR/Social Security Numbers
SPONSOR(S): Government Operations Subcommittee, Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	9 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for social security numbers of current and former agency employees held by the employing agency.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law. It also authorizes release of such numbers by the employing agency:

- If disclosure of such number is required by federal or state law or a court order.
- To another agency or governmental entity if disclosure of such number is necessary for the receiving agency or entity to perform its duties and responsibilities.
- If the current or former agency employee consents in writing to the disclosure of his or her social security number.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act
The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption under Review
Section 119.071(4)(a), F.S., provides a public record exemption for social security numbers of current and former agency[4] employees.[5] The numbers are confidential and exempt[6] from public record requirements when held by the employing agency. Current law does not authorize release of such numbers by the employing agency.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
[5] Section 119.071(5)(a), F.S., provides a general public record exemption for social security numbers. The general exemption was created in order to provide a general protection for such numbers when a specific exemption for social security numbers does not exist. It does not supersede any other applicable public record exemption for social security numbers.
[6] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.[7]

During the 2013 interim, the House Government Operations Subcommittee and the Senate Governmental Oversight and Accountability Committee sent a joint questionnaire to state agencies as part of the Open Government Sunset Review process.[8] Of the 26 agencies that responded, 24 recommended reenactment of the public record exemption for social security numbers of current and former agency employees.[9] Many cited the potential for identity theft and criminal activity as the rationale for keeping employees' social security numbers confidential and exempt from public disclosure.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for social security numbers of current and former agency employees. It also authorizes release of such numbers in certain circumstances. Social security numbers of current and former agency employees may be disclosed by the employing agency:

- If disclosure of such number is required by federal or state law or a court order.
- To another agency or governmental entity if disclosure of such number is necessary for the receiving agency or entity to perform its duties and responsibilities.
- If the current or former agency employee consents in writing to the disclosure of his or her social security number.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for social security numbers of current or former agency employees.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[7] Section 119.071(4)(a) F.S.

[8] Agency responses to the joint questionnaire are on file with the House Government Operations Subcommittee.

[9] The Department of the Lottery indicated that it utilizes a public record exemption specific to the department. As such, it provided no recommendation regarding the public record exemption under review. The Department of Legal Affairs indicated social security numbers should be confidential and released only as authorized by statute; however, the department did not make an official recommendation regarding reenactment or repeal of the exemption under review.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., relating
4 to an exemption from public records requirements for
5 social security numbers of current and former agency
6 employees; providing exceptions to the exemption;
7 saving the exemption from repeal under the Open
8 Government Sunset Review Act; providing an effective
9 date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (a) of subsection (4) of section
14 119.071, Florida Statutes, is amended to read:
15 119.071 General exemptions from inspection or copying of
16 public records.—
17 (4) AGENCY PERSONNEL INFORMATION.—
18 (a)1. The social security numbers of all current and
19 former agency employees which numbers are held by the employing
20 agency are confidential and exempt from s. 119.07(1) and s.
21 24(a), Art. I of the State Constitution.
22 2. Social security numbers of current and former agency
23 employees may be disclosed by the employing agency:
24 a. If the disclosure of the social security number is
25 expressly required by federal or state law or a court order.
26 b. To another agency or governmental entity if disclosure

27 of the social security number is necessary for the receiving
28 agency or entity to perform its duties and responsibilities.
29 c. If the current or former agency employee expressly
30 consents in writing to the disclosure of his or her social
31 security number ~~This paragraph is subject to the Open Government~~
32 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
33 ~~repealed on October 2, 2014, unless reviewed and saved from~~
34 ~~repeal through reenactment by the Legislature~~.
35 Section 2. This act shall take effect October 1, 2014.

PCS SAC 14-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 14-02 Florida Retirement System
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 621,774 active members, 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program, State Community College System Optional Retirement Program, and the State University System Optional Retirement Program.

This bill makes the following changes to the FRS, effective July 1, 2015:

- Increases the vesting period for members enrolled in the pension plan from eight years to 10 years;
- Increases the disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

The bill makes changes to the FRS; however, benefits of current members and retirees are not affected by changes in this bill. Rather, changes included in the bill only pertain to members initially enrolled in the system on or after July 1, 2015.

The bill provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

Based on the results of special actuarial studies performed by the Milliman actuarial and consulting firm in 2013, the bill should have no fiscal impact on state or local governments for fiscal year 2014-15. It has a projected positive fiscal impact in fiscal year 2015-16 of $500,000 for all participating entities. However, in fiscal year 2016-17, the bill is projected to have a negative fiscal impact resulting in a total cost of $900,000 for all participating entities. In fiscal year 2017-18, the bill is projected to have a positive fiscal impact with savings continuing to increase each subsequent year over the period covered by the study for a total cumulative savings of $28,594,900,000. *See* Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[1]

The FRS is governed by the Florida Retirement System Act.[2] The FRS, which is a multiple-employer, contributory plan,[3] provides retirement income benefits to 621,774 active members,[4] 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program (DROP).[5] It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.[6]

The membership of the FRS is divided into five membership classes:[7]

- Regular Class[8] consists of 536,506 members (86.3 percent of the membership);
- Special Risk Class[9] includes 68,800 members (11.1 percent);
- Special Risk Administrative Support Class[10] has 58 members (.009 percent);
- Elected Officers' Class[11] has 2,094 members (0.35 percent); and
- Senior Management Service Class[12] has 7,450 members (1.2 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined benefit plan, also known as the pension plan; and

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[1] *The Florida Retirement System Annual Report*, July 1, 2012 – June 30, 2013, at 18. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 21, 2014).

[2] Chapter 121, F.S.

[3] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after June 30, 2011.

[4] As of June 30, 2013, the FRS defined benefit plan, also known as the pension plan, had 514,436 members, and the defined contribution plan, also known as the investment plan, had 107,338 members. *Supra* at FN 1.

[5] *Id.* at 10.

[6] Florida Retirement System Participating Employers for Plan Year 2013-14, prepared by the Department of Management Services, Division of Retirement, Revised January 2014, at 8. A copy of the document can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 21, 2014).

[7] *Supra* at FN 1.

[8] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

[9] The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

[10] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

[11] The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

[12] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

- The defined contribution plan, also known as the investment plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. The earliest that any member could participate in the investment plan was July 1, 2002.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.[13] With respect to the employer contributions, a member vests after completing one work year with an FRS employer.[14] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[15]

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.[16] The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.[17]

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).[18] Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[19] For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.[20] A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.[21] The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%
Elected Officer's Class	
• Justices and Judges	3.33%
• Others	3.00%

[13] Section 121.4501(6)(a), F.S.

[14] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

[15] Section 121.591, F.S.

[16] Section 121.4501(8), F.S.

[17] Section 4, Art. IV, Fla. Const.

[18] Section 121.025, F.S.

[19] Section 121.021(45)(a), F.S.

[20] Section 121.021(45)(b), F.S.

[21] Section 121.091, F.S.

Membership Class	Accrual Rate
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[22] For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[23] Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.[24]

Default and Second Election

A new enrollee has until the last business day of the fifth month following the employee's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.[25]

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.[26]

Disability and Death Benefits

Disability retirement benefits are provided for both in-line-of-duty and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,[27] compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for Special Risk Class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If a disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[28]

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.[29] Under the pension plan, if the member has vested at the time of his or her death, the member's joint annuitant[30] is entitled to receive the optional form[31] of payment for the annuitant's lifetime.[32] If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.[33] If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received

[22] Section 121.021(29)(a)1., F.S.
[23] Section 121.021(29)(b)1., F.S.
[24] Sections 121.021(29)(a)2. and (b)2., F.S.
[25] Section 121.4501(4), F.S.
[26] Section 121.4501(4)(g), F.S.
[27] *See* s. 121.4501(16), F.S.
[28] Section 121.091(4)(f), F.S.
[29] For purposes of disbursement of benefits, a member is considered retired as of the date of the death.
[30] A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.
[31] Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.
[32] Section 121.091(7)(b)1., F.S.
[33] Section 121.091(7)(b)2., F.S.

by the member at the time of death for the rest of the surviving spouse's lifetime.[34] Members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.[35]

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.[36] While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.[37]

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.[38]

Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.[39] Eligible retirees receive $5 per month for each year of creditable service used to calculate the retirement benefit. The HIS payment must be at least $30, but not more than $150 per month.[40]

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;[41]
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;[42] and
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.[43]

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage

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[34] Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children that are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

[35] *See* s. 121.591(3)(b), F.S.

[36] Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

[37] If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP was reduced to 1.3 percent.

[38] *See* s. 121.4501(2)(k) and (4)(f), F.S.

[39] Sections 112.363(1) and (2), F.S.

[40] Section 112.363(3)(e), F.S.

[41] The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

[42] Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

[43] If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

regardless of whether the member participates in the pension plan or the investment plan.[44] The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:[45]

Membership Class	Effective July 1, 2013
Regular Class	3.53%
Special Risk Class	11.00%
Special Risk Administrative Support Class	4.17%
Elected Officer's Support Class • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • County Officers	 6.52% 10.05% 8.44%
Senior Management Service Class	4.81%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.[46]

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.[47]

Effect of the Bill

The bill makes changes to the FRS; however, benefits of current members and retirees are not affected by changes in this bill. In addition, employees initially enrolled in the FRS before July 1, 2015, will not have their retirement choices affected.

Effective July 1, 2015, the bill makes the following changes to the FRS:

- Increases the vesting period for members enrolled in the pension plan from eight years to 10 years;
- Increases the disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

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[44] Section 121.70(1), F.S.
[45] Section 121.71(4), F.S.
[46] Section 121.71(3), F.S.
[47] *See* ss. 121.4503 and 121.72(1), F.S.

Elected Officers' Class and Senior Management Service Class
The bill provides that members initially enrolled in the FRS on or after July 1, 2015, in a position covered by the Elected Officers' Class or Senior Management Service Class may not participate in the pension plan. Instead of having a choice between two plans, such members must participate in the investment plan and may not utilize a second election option to become a member of the pension plan. Investment plan membership continues even if subsequent employment results in the member becoming covered by another membership class.

For a member initially enrolled in the FRS on or after July 1, 2015, in a position covered by another class, the member may choose to participate in the pension plan or the investment plan. If the member chooses to participate in the pension plan and subsequently participates in a position covered by the Elected Officers' Class or Senior Management Service Class, the member may continue to participate in the pension plan. Therefore, the prohibition against participation in the pension plan only affects members initially enrolling in the FRS on or after July 1, 2015, in positions covered by the Elected Officers' Class or Senior Management Service Class.

Default
Members initially enrolled on or after July 1, 2015, have until the last day of the eighth month after hire to choose between participation in the investment plan or pension plan, except that members of the Elected Officers' Class and Senior Management Service Class may not participate in the pension plan. If the member does not make a selection, the member will default to the investment plan.

Vesting
For members initially enrolled in the FRS Pension Plan on or after July 1, 2015, the bill extends the vesting period from eight years to 10 years of creditable service. The vesting period from members of the investment plan remains at one year of creditable service.

The bill also extends the disability vesting period for non-duty disability from eight years to 10 years for all members initially enrolled in the FRS on or after July 1, 2015.

Optional Retirement Programs
The bill closes the Senior Management Service Optional Annuity Program to new members on July 1, 2015. Any member may elect to participate in the annuity program before July 1, 2015, and members currently enrolled in the annuity program may continue to participate in that program. However, no new members may join the program on or after July 1, 2015.

Elected Officials
The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the Elected Officers' Class. Because the Senior Management Service Optional Annuity Program will not be offered on or after July 1, 2015, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS or withdraw from the system.[48]

Important State Interest
The bill provides a statement of important state interest. It provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

B. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., revising the definition of "vested" or "vesting"; providing that a member initially enrolled in the FRS Pension Plan after a certain date is vested after 10 years of creditable service.

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[48] Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

Section 2 amends s. 121.051, F.S., providing for compulsory membership in the FRS Investment Plan for employees in the Elected Officers' Class or the Senior Management Service Class initially enrolled on or after a specified date; conforming cross-references to changes made by the act.

Section 3 amends s. 121.052, F.S., prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class on a specified date.

Section 4 amends s. 121.055, F.S., prohibiting an elected official eligible for membership in the Elected Officers' Class from enrolling in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Service Optional Annuity Program to new members after a specified date.

Section 5 amends s. 121.091, F.S., providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act.

Section 6 amends s. 121.4501, F.S., requiring certain employees initially enrolled in the FRS on or after a specified date to be compulsory members of the investment plan; revising the definition of "member" or "employee"; revising a provision relating to acknowledgment of an employee's election to participate in the investment plan; placing certain employees in the pension plan from their date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; providing certain members with a specified time to choose participation in the pension plan or investment plan; providing for the transfer of certain contributions; revising the education component; conforming provisions and cross-references to changes made by the act.

Section 7 amends s. 121.591, F.S., revising provisions relating to disability retirement benefits.

Sections 8 through 11 amend ss. 121.35, 238.072, 413.051, 1012.875, F.S., conforming cross references.

Section 12 provides that the act fulfills an important state interest.

Section 13 provides an effective date of July 1, 2014, unless otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

During the 2013 Legislative Session, the Milliman actuarial and consulting firm conducted several actuarial studies at the request of the Speaker of the House of Representatives and the President of the Senate. The purpose of the studies was to determine the fiscal impact of requiring new enrollees who participate in the Elected Officers' Class or Senior Management Service Class to participate in the investment plan, increasing the vesting period for the pension plan, and changing the default for employees who fail to make a plan selection. The studies provided a comparison between continuing the current plan and making the above changes to the FRS.

The relevant 2013 studies were compared to determine the projected fiscal impact of this bill, because no major changes have been made to the FRS since those studies were performed. However, this bill may not necessarily produce the same projected midterm and long term results as predicted in the relevant 2013 studies.

Based on the results of the comparison between the applicable studies, the bill is projected to have no fiscal impact in fiscal year 2014-15. The projected (costs)/savings for select subsequent years are summarized in the table below (in millions $):

Employer Funded by State	FY 2014-15		FY 2015-16		FY 2016-17		FY 2017-18		FY 2018-19	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	-	-	0.1	0.1	(0.1)	(0.1)	1.0	0.9	1.9	1.9
School Boards	-		-		-		6.4		9.6	
State Universities	-		-		-		1.1		1.7	
State Colleges	-		-		-		0.5		0.8	
Total	**-**	**-**	**0.1**	**0.1**	**(0.1)**	**(0.1)**	**9.0**	**0.9**	**14.0**	**1.9**
Employers **Not** Funded by State										
Counties	-		0.3		(0.6)		2.2		4.6	
Cities/Other	-		-		(0.1)		0.7		1.1	
Subtotal			0.3		(0.7)		2.9		5.7	
Grand Total	**-**	**-**	**0.4**	**0.1**	**(0.8)**	**(0.1)**	**11.9**	**0.9**	**19.7**	**1.9**

Employer Funded by State	FY 2019-20		FY 2024-25		FY 2029-30		FY 2034-35		FY 2039-40	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	3.4	3.4	14.8	14.8	35.6	35.5	75.9	75.9	178.1	178.1
School Boards	17.1		68.4		168.6		372.2		877.5	
State Universities	3.0		13.8		39.2		89.8		208.3	
State Colleges	1.4		5.8		14.5		32.0		74.5	
Total	**24.9**	**3.4**	**102.8**	**14.8**	**257.9**	**35.5**	**569.9**	**75.9**	**1,338.4**	**178.1**
Employers **Not** Funded by State										
Counties	8.5		41.2		106.0		244.7		604.6	
Cities/Other	2.0		8.5		21.8		48.2		113.2	
Subtotal	10.5		49.7		127.8		292.9		717.8	
Grand Total	**35.4**	**3.4**	**152.5**	**14.8**	**385.7**	**35.5**	**862.8**	**75.9**	**2,056.2**	**178.1**

The comparison of the actuarial studies projects increasing savings over the long-term for a total cumulative savings of $28,594,900,000. However, the actuary cautioned that projections become increasingly unreliable, particularly after the fifth year. Variances from plan assumptions invariably

occur which may become magnified over time. Nonetheless, the rates produced by the comparative analysis to the baseline plan, using the same assumptions, yield the above theoretical savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires cities and counties to spend money or take action that requires the expenditure of money; however, an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

2. Other:

   Actuarial Requirements
   Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

   > SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

   Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

   Contractual Obligations
   Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

   The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.[49] This "preservation of rights" provision[50] was established by the Florida Legislature with an effective date of July 1, 1974.

   The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.[51] The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement

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[49] Section 121.011(3)(d), F.S.

[50] The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).

[51] *Id.* at 1035.

status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.[52]

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.[53] More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.[54]

This bill does not change any benefits that a member earned prior to July 1, 2015. In fact, members enrolled in the FRS before July 1, 2015, should experience no change in the benefits available under the FRS. The bill only changes the FRS system for new enrollees, enrolling in the system on or after July 1, 2015.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[52] *Id.* at 1036.
[53] *Id.* at 1037.
[54] *Rick Scott, et al. v. George Williams, et al.*, 107 So.3d 379 (Fla. 2013).

1 A bill to be entitled
2 An act relating to the Florida Retirement System;
3 amending s. 121.021, F.S.; revising the definition of
4 "vested" or "vesting"; providing that a member
5 initially enrolled in the Florida Retirement System
6 after a certain date is vested in the pension plan
7 after 10 years of creditable service; amending s.
8 121.051, F.S.; providing for compulsory membership in
9 the Florida Retirement System Investment Plan for
10 employees in the Elected Officers' Class or the Senior
11 Management Service Class initially enrolled after a
12 specified date; conforming cross-references to changes
13 made by the act; amending s. 121.052, F.S.;
14 prohibiting members of the Elected Officers' Class
15 from joining the Senior Management Service Class after
16 a specified date; amending s. 121.055, F.S.;
17 prohibiting an elected official eligible for
18 membership in the Elected Officers' Class from
19 enrolling in the Senior Management Service Class or in
20 the Senior Management Service Optional Annuity
21 Program; closing the Senior Management Optional
22 Annuity Program to new members after a specified date;
23 amending s. 121.091, F.S.; providing that certain
24 members are entitled to a monthly disability benefit;
25 revising provisions to conform to changes made by the
26 act; amending s. 121.4501, F.S.; requiring certain

27 employees initially enrolled in the Florida Retirement
28 System on or after a specified date to be compulsory
29 members of the investment plan; revising the
30 definition of "member" or "employee"; revising a
31 provision relating to acknowledgement of an employee's
32 election to participate in the investment plan;
33 placing certain employees in the pension plan from
34 their date of hire until they are automatically
35 enrolled in the investment plan or timely elect
36 enrollment in the pension plan; providing certain
37 members with a specified time to choose participation
38 in the pension plan or the investment plan; providing
39 for the transfer of certain contributions; revising
40 the education component; conforming provisions and
41 cross-references to changes made by the act; amending
42 s. 121.591, F.S.; revising provisions relating to
43 disability retirement benefits; amending ss. 121.35,
44 238.072, 413.051, and 1012.875, F.S.; conforming
45 cross-references; providing that the act fulfills an
46 important state interest; providing an effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50
51 Section 1. Subsection (45) of section 121.021, Florida
52 Statutes, is amended to read:

53 121.021 Definitions.—The following words and phrases as
54 used in this chapter have the respective meanings set forth
55 unless a different meaning is plainly required by the context:
56 (45) "Vested" or "vesting" means the guarantee that a
57 member is eligible to receive a future retirement benefit upon
58 completion of the required years of creditable service for the
59 employee's class of membership, even though the member may have
60 terminated covered employment before reaching normal or early
61 retirement date. Being vested does not entitle a member to a
62 disability benefit. Provisions governing entitlement to
63 disability benefits are set forth under s. 121.091(4).
64 (a) Effective July 1, 2001, through June 30, 2011, a 6-
65 year vesting requirement shall be implemented for the Florida
66 Retirement System Pension Plan:
67 1. Any member employed in a regularly established position
68 on July 1, 2001, who completes or has completed a total of 6
69 years of creditable service is considered vested.
70 2. Any member initially enrolled in the Florida Retirement
71 System before July 1, 2001, but not employed in a regularly
72 established position on July 1, 2001, shall be deemed vested
73 upon completion of 6 years of creditable service if such member
74 is employed in a covered position for at least 1 work year after
75 July 1, 2001. However, a member is not required to complete more
76 years of creditable service than would have been required for
77 that member to vest under retirement laws in effect before July
78 1, 2001.

79 3. Any member initially enrolled in the Florida Retirement
80 System on July 1, 2001, through June 30, 2011, shall be deemed
81 vested upon completion of 6 years of creditable service.
82 (b) Any member initially enrolled in the Florida
83 Retirement System on ~~or after~~ July 1, 2011, through June 30,
84 2015, shall be vested in the pension plan upon completion of 8
85 years of creditable service.
86 (c) Any member initially enrolled in the Florida
87 Retirement System on or after July 1, 2015, shall be vested in
88 the pension plan upon completion of 10 years of creditable
89 service.
90 Section 2. Paragraph (c) of subsection (2) of section
91 121.051, Florida Statutes, is amended, present subsections (3)
92 through (9) of that section are renumbered as subsections (4)
93 through (10), respectively, and a new subsection (3) is added to
94 that section, to read:
95 121.051 Participation in the system.—
96 (2) OPTIONAL PARTICIPATION.—
97 (c) Employees of public community colleges or charter
98 technical career centers sponsored by public community colleges,
99 designated in s. 1000.21(3), who are members of the Regular
100 Class of the Florida Retirement System and who comply with the
101 criteria set forth in this paragraph and s. 1012.875 may, in
102 lieu of participating in the Florida Retirement System, elect to
103 withdraw from the system altogether and participate in the State
104 Community College System Optional Retirement Program provided by

105 the employing agency under s. 1012.875.
106 1.a. Through June 30, 2001, the cost to the employer for
107 benefits under the optional retirement program equals the normal
108 cost portion of the employer retirement contribution which would
109 be required if the employee were a member of the pension plan's
110 Regular Class, plus the portion of the contribution rate
111 required by s. 112.363(8) which would otherwise be assigned to
112 the Retiree Health Insurance Subsidy Trust Fund.
113 b. Effective July 1, 2001, through June 30, 2011, each
114 employer shall contribute on behalf of each member of the
115 optional program an amount equal to 10.43 percent of the
116 employee's gross monthly compensation. The employer shall deduct
117 an amount for the administration of the program.
118 c. Effective July 1, 2011, through June 30, 2012, each
119 member shall contribute an amount equal to the employee
120 contribution required under s. 121.71(3)(a). The employer shall
121 contribute on behalf of each program member an amount equal to
122 the difference between 10.43 percent of the employee's gross
123 monthly compensation and the employee's required contribution
124 based on the employee's gross monthly compensation.
125 d. Effective July 1, 2012, each member shall contribute an
126 amount equal to the employee contribution required under s.
127 121.71(3)(a). The employer shall contribute on behalf of each
128 program member an amount equal to the difference between 8.15
129 percent of the employee's gross monthly compensation and the
130 employee's required contribution based on the employee's gross

131 monthly compensation.
132 e. The employer shall contribute an additional amount to
133 the Florida Retirement System Trust Fund equal to the unfunded
134 actuarial accrued liability portion of the Regular Class
135 contribution rate.
136 2. The decision to participate in the optional retirement
137 program is irrevocable as long as the employee holds a position
138 eligible for participation, except as provided in subparagraph
139 3. Any service creditable under the Florida Retirement System is
140 retained after the member withdraws from the system; however,
141 additional service credit in the system may not be earned while
142 a member of the optional retirement program.
143 3. An employee who has elected to participate in the
144 optional retirement program shall have one opportunity, at the
145 employee's discretion, to transfer from the optional retirement
146 program to the pension plan of the Florida Retirement System or
147 to the investment plan established under part II of this
148 chapter, subject to the terms of the applicable optional
149 retirement program contracts.
150 a. If the employee chooses to move to the investment plan,
151 any contributions, interest, and earnings creditable to the
152 employee under the optional retirement program are retained by
153 the employee in the optional retirement program, and the
154 applicable provisions of s. 121.4501(4) govern the election.
155 b. If the employee chooses to move to the pension plan of
156 the Florida Retirement System, the employee shall receive

157 service credit equal to his or her years of service under the
158 optional retirement program.
159 (I) The cost for such credit is the amount representing
160 the present value of the employee's accumulated benefit
161 obligation for the affected period of service. The cost shall be
162 calculated as if the benefit commencement occurs on the first
163 date the employee becomes eligible for unreduced benefits, using
164 the discount rate and other relevant actuarial assumptions that
165 were used to value the Florida Retirement System Pension Plan
166 liabilities in the most recent actuarial valuation. The
167 calculation must include any service already maintained under
168 the pension plan in addition to the years under the optional
169 retirement program. The present value of any service already
170 maintained must be applied as a credit to total cost resulting
171 from the calculation. The division must ensure that the transfer
172 sum is prepared using a formula and methodology certified by an
173 enrolled actuary.
174 (II) The employee must transfer from his or her optional
175 retirement program account and from other employee moneys as
176 necessary, a sum representing the present value of the
177 employee's accumulated benefit obligation immediately following
178 the time of such movement, determined assuming that attained
179 service equals the sum of service in the pension plan and
180 service in the optional retirement program.
181 4. Participation in the optional retirement program is
182 limited to employees who satisfy the following eligibility

183 criteria:
184 a. The employee is otherwise eligible for membership or
185 renewed membership in the Regular Class of the Florida
186 Retirement System, as provided in s. 121.021(11) and (12) or s.
187 121.122.
188 b. The employee is employed in a full-time position
189 classified in the Accounting Manual for Florida's Public
190 Community Colleges as:
191 (I) Instructional; or
192 (II) Executive Management, Instructional Management, or
193 Institutional Management and the community college determines
194 that recruiting to fill a vacancy in the position is to be
195 conducted in the national or regional market, and the duties and
196 responsibilities of the position include the formulation,
197 interpretation, or implementation of policies, or the
198 performance of functions that are unique or specialized within
199 higher education and that frequently support the mission of the
200 community college.
201 c. The employee is employed in a position not included in
202 the Senior Management Service Class of the Florida Retirement
203 System as described in s. 121.055.
204 5. Members of the program are subject to the same
205 reemployment limitations, renewed membership provisions, and
206 forfeiture provisions applicable to regular members of the
207 Florida Retirement System under ss. 121.091(9), 121.122, and
208 121.091(5), respectively. A member who receives a program

209 distribution funded by employer and required employee
210 contributions is deemed to be retired from a state-administered
211 retirement system if the member is subsequently employed with an
212 employer that participates in the Florida Retirement System.
213 6. Eligible community college employees are compulsory
214 members of the Florida Retirement System until, pursuant to s.
215 1012.875, a written election to withdraw from the system and
216 participate in the optional retirement program is filed with the
217 program administrator and received by the division.
218 a. A community college employee whose program eligibility
219 results from initial employment shall be enrolled in the
220 optional retirement program retroactive to the first day of
221 eligible employment. The employer and employee retirement
222 contributions paid through the month of the employee plan change
223 shall be transferred to the community college to the employee's
224 optional program account, and, effective the first day of the
225 next month, the employer shall pay the applicable contributions
226 based upon subparagraph 1.
227 b. A community college employee whose program eligibility
228 is due to the subsequent designation of the employee's position
229 as one of those specified in subparagraph 4., or due to the
230 employee's appointment, promotion, transfer, or reclassification
231 to a position specified in subparagraph 4., must be enrolled in
232 the program on the first day of the first full calendar month
233 that such change in status becomes effective. The employer and
234 employee retirement contributions paid from the effective date

235 through the month of the employee plan change must be
236 transferred to the community college to the employee's optional
237 program account, and, effective the first day of the next month,
238 the employer shall pay the applicable contributions based upon
239 subparagraph 1.
240 7. Effective July 1, 2003, through December 31, 2008, any
241 member of the optional retirement program who has service credit
242 in the pension plan of the Florida Retirement System for the
243 period between his or her first eligibility to transfer from the
244 pension plan to the optional retirement program and the actual
245 date of transfer may, during employment, transfer to the
246 optional retirement program a sum representing the present value
247 of the accumulated benefit obligation under the defined benefit
248 retirement program for the period of service credit. Upon
249 transfer, all service credit previously earned under the pension
250 plan during this period is nullified for purposes of entitlement
251 to a future benefit under the pension plan.
252 (3) INVESTMENT PLAN MEMBERSHIP COMPULSORY.—
253 (a) Employees initially enrolled on or after July 1, 2015,
254 in positions covered by the Elected Officers' Class or the
255 Senior Management Service Class are compulsory members of the
256 investment plan, except those who withdraw from the system under
257 s. 121.052(3)(d) or s. 121.055(1)(b)2., or those who participate
258 in an optional retirement program under paragraph (1)(a),
259 paragraph (2)(c), or s. 121.35. Investment plan membership
260 continues if there is subsequent employment in a position

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

V

261 covered by another membership class. Membership in the pension
262 plan is not permitted except as provided in s. 121.591(2).
263 Employees initially enrolled in the Florida Retirement System
264 prior to July 1, 2015, may retain their membership in the
265 pension plan or investment plan and are eligible to use the
266 election opportunity specified in s. 121.4501(4)(f). Employees
267 initially enrolled on or after July 1, 2015, in positions
268 covered by the Elected Officers' Class or the Senior Management
269 Service Class are not eligible to use the election opportunity
270 specified in s. 121.4501(4)(f).
271 (b) Employees eligible to withdraw from the system under
272 s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw
273 from the system or to participate in the investment plan as
274 provided in these sections. Employees eligible for optional
275 retirement programs under paragraph (2)(c) or s. 121.35 may
276 choose to participate in the optional retirement program or the
277 investment plan as provided in this paragraph or this section.
278 Eligible employees required to participate pursuant to (1)(a) in
279 the optional retirement program as provided under s. 121.35 must
280 participate in the investment plan when employed in a position
281 not eligible for the optional retirement program.
282 Section 3. Paragraph (c) of subsection (3) of section
283 121.052, Florida Statutes, is amended to read:
284 121.052 Membership class of elected officers.—
285 (3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective
286 July 1, 1990, participation in the Elected Officers' Class shall

287 be compulsory for elected officers listed in paragraphs (2)(a)-
288 (d) and (f) assuming office on or after said date, unless the
289 elected officer elects membership in another class or withdraws
290 from the Florida Retirement System as provided in paragraphs
291 (3)(a)-(d):
292 (c) Before July 1, 2015, any elected officer may, within 6
293 months after assuming office, or within 6 months after this act
294 becomes a law for serving elected officers, elect membership in
295 the Senior Management Service Class as provided in s. 121.055 in
296 lieu of membership in the Elected Officers' Class. Any such
297 election made by a county elected officer shall have no effect
298 upon the statutory limit on the number of nonelective full-time
299 positions that may be designated by a local agency employer for
300 inclusion in the Senior Management Service Class under s.
301 121.055(1)(b)1.
302 Section 4. Paragraph (f) of subsection (1) and paragraph
303 (c) of subsection (6) of section 121.055, Florida Statutes, are
304 amended to read:
305 121.055 Senior Management Service Class.—There is hereby
306 established a separate class of membership within the Florida
307 Retirement System to be known as the "Senior Management Service
308 Class," which shall become effective February 1, 1987.
309 (1)
310 (f) Effective July 1, 1997, through June 30, 2015:
311 1. Except as provided in subparagraphs ~~subparagraph~~ 3. and
312 4., an elected state officer eligible for membership in the

313 Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who
314 elects membership in the Senior Management Service Class under
315 s. 121.052(3)(c) may, within 6 months after assuming office or
316 within 6 months after this act becomes a law for serving elected
317 state officers, elect to participate in the Senior Management
318 Service Optional Annuity Program, as provided in subsection (6),
319 in lieu of membership in the Senior Management Service Class.
320 2. Except as provided in subparagraphs ~~subparagraph~~ 3. and
321 4., an elected officer of a local agency employer eligible for
322 membership in the Elected Officers' Class under s. 121.052(2)(d)
323 who elects membership in the Senior Management Service Class
324 under s. 121.052(3)(c) may, within 6 months after assuming
325 office, or within 6 months after this act becomes a law for
326 serving elected officers of a local agency employer, elect to
327 withdraw from the Florida Retirement System, as provided in
328 subparagraph (b)2., in lieu of membership in the Senior
329 Management Service Class.
330 3. A retiree of a state-administered retirement system who
331 is initially reemployed in a regularly established position on
332 or after July 1, 2010, as an elected official eligible for the
333 Elected Officers' Class may not be enrolled in renewed
334 membership in the Senior Management Service Class or in the
335 Senior Management Service Optional Annuity Program as provided
336 in subsection (6), and may not withdraw from the Florida
337 Retirement System as a renewed member as provided in
338 subparagraph (b)2., as applicable, in lieu of membership in the

339 Senior Management Service Class.
340 4. On or after July 1, 2015, an elected official eligible
341 for membership in the Elected Officers' Class may not enroll in
342 the Senior Management Service Class or in the Senior Management
343 Service Optional Annuity Program as provided in subsection (6).
344 (6)
345 (c) Participation.—
346 1. An eligible employee who is employed on or before
347 February 1, 1987, may elect to participate in the optional
348 annuity program in lieu of participating in the Senior
349 Management Service Class. Such election must be made in writing
350 and filed with the department and the personnel officer of the
351 employer on or before May 1, 1987. An eligible employee who is
352 employed on or before February 1, 1987, and who fails to make an
353 election to participate in the optional annuity program by May
354 1, 1987, shall be deemed to have elected membership in the
355 Senior Management Service Class.
356 2. Except as provided in subparagraph 6., an employee who
357 becomes eligible to participate in the optional annuity program
358 by reason of initial employment commencing after February 1,
359 1987, may, within 90 days after the date of commencing
360 employment, elect to participate in the optional annuity
361 program. Such election must be made in writing and filed with
362 the personnel officer of the employer. An eligible employee who
363 does not within 90 days after commencing employment elect to
364 participate in the optional annuity program shall be deemed to

365 have elected membership in the Senior Management Service Class.
366 3. A person who is appointed to a position in the Senior
367 Management Service Class and who is a member of an existing
368 retirement system or the Special Risk or Special Risk
369 Administrative Support Classes of the Florida Retirement System
370 may elect to remain in such system or class in lieu of
371 participating in the Senior Management Service Class or optional
372 annuity program. Such election must be made in writing and filed
373 with the department and the personnel officer of the employer
374 within 90 days after such appointment. An eligible employee who
375 fails to make an election to participate in the existing system,
376 the Special Risk Class of the Florida Retirement System, the
377 Special Risk Administrative Support Class of the Florida
378 Retirement System, or the optional annuity program shall be
379 deemed to have elected membership in the Senior Management
380 Service Class.
381 4. Except as provided in subparagraph 5., an employee's
382 election to participate in the optional annuity program is
383 irrevocable if the employee continues to be employed in an
384 eligible position and continues to meet the eligibility
385 requirements set forth in this paragraph.
386 5. Effective from July 1, 2002, through September 30,
387 2002, an active employee in a regularly established position who
388 has elected to participate in the Senior Management Service
389 Optional Annuity Program has one opportunity to choose to move
390 from the Senior Management Service Optional Annuity Program to

391 the Florida Retirement System Pension Plan.
392 a. The election must be made in writing and must be filed
393 with the department and the personnel officer of the employer
394 before October 1, 2002, or, in the case of an active employee
395 who is on a leave of absence on July 1, 2002, within 90 days
396 after the conclusion of the leave of absence. This election is
397 irrevocable.
398 b. The employee shall receive service credit under the
399 pension plan equal to his or her years of service under the
400 Senior Management Service Optional Annuity Program. The cost for
401 such credit is the amount representing the present value of that
402 employee's accumulated benefit obligation for the affected
403 period of service.
404 c. The employee must transfer the total accumulated
405 employer contributions and earnings on deposit in his or her
406 Senior Management Service Optional Annuity Program account. If
407 the transferred amount is not sufficient to pay the amount due,
408 the employee must pay a sum representing the remainder of the
409 amount due. The employee may not retain any employer
410 contributions or earnings from the Senior Management Service
411 Optional Annuity Program account.
412 6. A retiree of a state-administered retirement system who
413 is initially reemployed on or after July 1, 2010, may not renew
414 membership in the Senior Management Service Optional Annuity
415 Program.
416 7. Effective July 1, 2015, the Senior Management Service

417 Optional Annuity Program is closed to new members. Members
418 enrolled in the Senior Management Service Optional Annuity
419 Program before July 1, 2015, may retain their membership in the
420 annuity program.
421 Section 5. Paragraph (a) of subsection (4) of section
422 121.091, Florida Statutes, is amended to read:
423 121.091 Benefits payable under the system.—Benefits may
424 not be paid under this section unless the member has terminated
425 employment as provided in s. 121.021(39)(a) or begun
426 participation in the Deferred Retirement Option Program as
427 provided in subsection (13), and a proper application has been
428 filed in the manner prescribed by the department. The department
429 may cancel an application for retirement benefits when the
430 member or beneficiary fails to timely provide the information
431 and documents required by this chapter and the department's
432 rules. The department shall adopt rules establishing procedures
433 for application for retirement benefits and for the cancellation
434 of such application when the required information or documents
435 are not received.
436 (4) DISABILITY RETIREMENT BENEFIT.—
437 (a) Disability retirement; entitlement and effective
438 date.—
439 1.a. A member who becomes totally and permanently
440 disabled, as defined in paragraph (b), after completing 5 years
441 of creditable service, or a member who becomes totally and
442 permanently disabled in the line of duty regardless of service,

443 is entitled to a monthly disability benefit; except that any
444 member with less than 5 years of creditable service on July 1,
445 1980, or any person who becomes a member of the Florida
446 Retirement System on or after such date must have completed 10
447 years of creditable service before becoming totally and
448 permanently disabled in order to receive disability retirement
449 benefits for any disability which occurs other than in the line
450 of duty. However, if a member employed on July 1, 1980, who has
451 less than 5 years of creditable service as of that date becomes
452 totally and permanently disabled after completing 5 years of
453 creditable service and is found not to have attained fully
454 insured status for benefits under the federal Social Security
455 Act, such member is entitled to a monthly disability benefit.
456 b. Effective July 1, 2001, a member of the pension plan
457 initially enrolled before July 1, 2015, who becomes totally and
458 permanently disabled, as defined in paragraph (b), after
459 completing 8 years of creditable service, or a member who
460 becomes totally and permanently disabled in the line of duty
461 regardless of service, is entitled to a monthly disability
462 benefit.
463 c. Effective July 1, 2015, a member of the pension plan
464 initially enrolled on or after July 1, 2015, who becomes totally
465 and permanently disabled, as defined in paragraph (b), after
466 completing 10 years of creditable service, or a member who
467 becomes totally and permanently disabled in the line of duty
468 regardless of service, is entitled to a monthly disability

469 benefit.

470 2. If the division has received from the employer the
471 required documentation of the member's termination of
472 employment, the effective retirement date for a member who
473 applies and is approved for disability retirement shall be
474 established by rule of the division.

475 3. For a member who is receiving Workers' Compensation
476 payments, the effective disability retirement date may not
477 precede the date the member reaches Maximum Medical Improvement
478 (MMI), unless the member terminates employment before reaching
479 MMI.

480 Section 6. Subsection (1), paragraph (i) of subsection
481 (2), paragraph (b) of subsection (3), subsection (4), paragraph
482 (c) of subsection (5), subsection (8), and paragraphs (a), (b),
483 (c), and (h) of subsection (10) of section 121.4501, Florida
484 Statutes, are amended to read:

485 121.4501 Florida Retirement System Investment Plan.—

486 (1) The Trustees of the State Board of Administration
487 shall establish a defined contribution program called the
488 "Florida Retirement System Investment Plan" or "investment plan"
489 for members of the Florida Retirement System under which
490 retirement benefits will be provided for eligible employees who
491 elect to participate in the program and for employees initially
492 enrolled on or after July 1, 2015, in positions covered by the
493 Elected Officers' Class or the Senior Management Service Class
494 and are compulsory members of the investment plan unless the

495 member withdraws from the system under s. 121.052(3)(d) or s.
496 121.055(1)(b)2., or participates in an optional retirement
497 program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35.
498 Investment plan membership continues if there is subsequent
499 employment in a position covered by another membership class.
500 The retirement benefits shall be provided through member-
501 directed investments, in accordance with s. 401(a) of the
502 Internal Revenue Code and related regulations. The employer and
503 employee shall make contributions, as provided in this section
504 and ss. 121.571 and 121.71, to the Florida Retirement System
505 Investment Plan Trust Fund toward the funding of benefits.
506 (2) DEFINITIONS.—As used in this part, the term:
507 (i) "Member" or "employee" means an eligible employee who
508 enrolls in or is defaulted into the investment plan as provided
509 in subsection (4), a terminated Deferred Retirement Option
510 Program member as described in subsection (21), or a beneficiary
511 or alternate payee of a member or employee.
512 (3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—
513 (b) Notwithstanding paragraph (a), an eligible employee
514 who elects to participate in or is defaulted into the investment
515 plan and establishes one or more individual member accounts may
516 elect to transfer to the investment plan a sum representing the
517 present value of the employee's accumulated benefit obligation
518 under the pension plan, except as provided in paragraph (4)(b).
519 Upon transfer, all service credit earned under the pension plan
520 is nullified for purposes of entitlement to a future benefit

521 under the pension plan. A member may not transfer the
522 accumulated benefit obligation balance from the pension plan
523 after the time period for enrolling in the investment plan has
524 expired.
525 1. For purposes of this subsection, the present value of
526 the member's accumulated benefit obligation is based upon the
527 member's estimated creditable service and estimated average
528 final compensation under the pension plan, subject to
529 recomputation under subparagraph 2. For state employees, initial
530 estimates shall be based upon creditable service and average
531 final compensation as of midnight on June 30, 2002; for district
532 school board employees, initial estimates shall be based upon
533 creditable service and average final compensation as of midnight
534 on September 30, 2002; and for local government employees,
535 initial estimates shall be based upon creditable service and
536 average final compensation as of midnight on December 31, 2002.
537 The dates specified are the "estimate date" for these employees.
538 The actuarial present value of the employee's accumulated
539 benefit obligation shall be based on the following:
540 a. The discount rate and other relevant actuarial
541 assumptions used to value the Florida Retirement System Trust
542 Fund at the time the amount to be transferred is determined,
543 consistent with the factors provided in sub-subparagraphs b. and
544 c.
545 b. A benefit commencement age, based on the member's
546 estimated creditable service as of the estimate date.

547 c. Except as provided under sub-subparagraph d., for a
548 member initially enrolled:
549 (I) Before July 1, 2011, the benefit commencement age is
550 the younger of the following, but may not be younger than the
551 member's age as of the estimate date:
552 (A) Age 62; or
553 (B) The age the member would attain if the member
554 completed 30 years of service with an employer, assuming the
555 member worked continuously from the estimate date, and
556 disregarding any vesting requirement that would otherwise apply
557 under the pension plan.
558 (II) On or after July 1, 2011, the benefit commencement
559 age is the younger of the following, but may not be younger than
560 the member's age as of the estimate date:
561 (A) Age 65; or
562 (B) The age the member would attain if the member
563 completed 33 years of service with an employer, assuming the
564 member worked continuously from the estimate date, and
565 disregarding any vesting requirement that would otherwise apply
566 under the pension plan.
567 d. For members of the Special Risk Class and for members
568 of the Special Risk Administrative Support Class entitled to
569 retain the special risk normal retirement date:
570 (I) Initially enrolled before July 1, 2011, the benefit
571 commencement age is the younger of the following, but may not be
572 younger than the member's age as of the estimate date:

573 (A) Age 55; or
574 (B) The age the member would attain if the member
575 completed 25 years of service with an employer, assuming the
576 member worked continuously from the estimate date, and
577 disregarding any vesting requirement that would otherwise apply
578 under the pension plan.
579 (II) Initially enrolled on or after July 1, 2011, the
580 benefit commencement age is the younger of the following, but
581 may not be younger than the member's age as of the estimate
582 date:
583 (A) Age 60; or
584 (B) The age the member would attain if the member
585 completed 30 years of service with an employer, assuming the
586 member worked continuously from the estimate date, and
587 disregarding any vesting requirement that would otherwise apply
588 under the pension plan.
589 e. The calculation must disregard vesting requirements and
590 early retirement reduction factors that would otherwise apply
591 under the pension plan.
592 2. For each member who elects to transfer moneys from the
593 pension plan to his or her account in the investment plan, the
594 division shall recompute the amount transferred under
595 subparagraph 1. within 60 days after the actual transfer of
596 funds based upon the member's actual creditable service and
597 actual final average compensation as of the initial date of
598 participation in the investment plan. If the recomputed amount

599 differs from the amount transferred by $10 or more, the division
600 shall:
601 a. Transfer, or cause to be transferred, from the Florida
602 Retirement System Trust Fund to the member's account the excess,
603 if any, of the recomputed amount over the previously transferred
604 amount together with interest from the initial date of transfer
605 to the date of transfer under this subparagraph, based upon the
606 effective annual interest equal to the assumed return on the
607 actuarial investment which was used in the most recent actuarial
608 valuation of the system, compounded annually.
609 b. Transfer, or cause to be transferred, from the member's
610 account to the Florida Retirement System Trust Fund the excess,
611 if any, of the previously transferred amount over the recomputed
612 amount, together with interest from the initial date of transfer
613 to the date of transfer under this subparagraph, based upon 6
614 percent effective annual interest, compounded annually, pro rata
615 based on the member's allocation plan.
616 3. If contribution adjustments are made as a result of
617 employer errors or corrections, including plan corrections,
618 following recomputation of the amount transferred under
619 subparagraph 1., the member is entitled to the additional
620 contributions or is responsible for returning any excess
621 contributions resulting from the correction. However, any return
622 of such erroneous excess pretax contribution by the plan must be
623 made within the period allowed by the Internal Revenue Service.
624 The present value of the member's accumulated benefit obligation

625 shall not be recalculated.
626 4. As directed by the member, the state board shall
627 transfer or cause to be transferred the appropriate amounts to
628 the designated accounts within 30 days after the effective date
629 of the member's participation in the investment plan unless the
630 major financial markets for securities available for a transfer
631 are seriously disrupted by an unforeseen event that causes the
632 suspension of trading on any national securities exchange in the
633 country where the securities were issued. In that event, the 30-
634 day period may be extended by a resolution of the state board.
635 Transfers are not commissionable or subject to other fees and
636 may be in the form of securities or cash, as determined by the
637 state board. Such securities are valued as of the date of
638 receipt in the member's account.
639 5. If the state board or the division receives
640 notification from the United States Internal Revenue Service
641 that this paragraph or any portion of this paragraph will cause
642 the retirement system, or a portion thereof, to be disqualified
643 for tax purposes under the Internal Revenue Code, the portion
644 that will cause the disqualification does not apply. Upon such
645 notice, the state board and the division shall notify the
646 presiding officers of the Legislature.
647 (4) PARTICIPATION; ENROLLMENT.—
648 (a)1. Effective June 1, 2002, through February 28, 2003, a
649 90-day election period was provided to each eligible employee
650 participating in the Florida Retirement System, preceded by a

651 90-day education period, permitting each eligible employee to
652 elect membership in the investment plan, and an employee who
653 failed to elect the investment plan during the election period
654 remained in the pension plan. An eligible employee who was
655 employed in a regularly established position during the election
656 period was granted the option to make one subsequent election,
657 as provided in paragraph (f). With respect to an eligible
658 employee who did not participate in the initial election period
659 or who are initially ~~employee who is~~ employed in a regularly
660 established position after the close of the initial election
661 period but before July 1, 2015, ~~on June 1, 2002, by a state~~
662 ~~employer:~~
663 ~~a. Any such employee may elect to participate in the~~
664 ~~investment plan in lieu of retaining his or her membership in~~
665 ~~the pension plan. The election must be made in writing or by~~
666 ~~electronic means and must be filed with the third-party~~
667 ~~administrator by August 31, 2002, or, in the case of an active~~
668 ~~employee who is on a leave of absence on April 1, 2002, by the~~
669 ~~last business day of the 5th month following the month the leave~~
670 ~~of absence concludes. This election is irrevocable, except as~~
671 ~~provided in paragraph (g). Upon making such election, the~~
672 ~~employee shall be enrolled as a member of the investment plan,~~
673 ~~the employee's membership in the Florida Retirement System is~~
674 ~~governed by the provisions of this part, and the employee's~~
675 ~~membership in the pension plan terminates. The employee's~~
676 ~~enrollment in the investment plan is effective the first day of~~

677 ~~the month for which a full month's employer contribution is made~~
678 ~~to the investment plan.~~
679 ~~b. Any such employee who fails to elect to participate in~~
680 ~~the investment plan within the prescribed time period is deemed~~
681 ~~to have elected to retain membership in the pension plan, and~~
682 ~~the employee's option to elect to participate in the investment~~
683 ~~plan is forfeited.~~
684 ~~2. With respect to employees who become eligible to~~
685 ~~participate in the investment plan by reason of employment in a~~
686 ~~regularly established position with a state employer commencing~~
687 ~~after April 1, 2002:~~
688 ~~a. Any~~ such employee shall, by default, be enrolled in the
689 pension plan at the commencement of employment, and may, by the
690 last business day of the 5th month following the employee's
691 month of hire, elect to participate in the investment plan. The
692 employee's election must be made in writing or by electronic
693 means and must be filed with the third-party administrator. The
694 election to participate in the investment plan is irrevocable,
695 except as provided in paragraph (f)~~(g)~~.
696 a.~~b.~~ If the employee files such election within the
697 prescribed time period, enrollment in the investment plan is
698 effective on the first day of employment. The retirement
699 contributions paid through the month of the employee plan change
700 shall be transferred to the investment program, and, effective
701 the first day of the next month, the employer and employee must
702 pay the applicable contributions based on the employee

703 membership class in the program.
704 b.~~c.~~ An employee who fails to elect to participate in the
705 investment plan within the prescribed time period is deemed to
706 have elected to retain membership in the pension plan, and the
707 employee's option to elect to participate in the investment plan
708 is forfeited.
709 2.~~3.~~ With respect to employees who become eligible to
710 participate in the investment plan pursuant to s.
711 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to
712 participate in the investment plan in lieu of retaining his or
713 her membership in the State Community College System Optional
714 Retirement Program or the State University System Optional
715 Retirement Program. The election must be made in writing or by
716 electronic means and must be filed with the third-party
717 administrator. This election is irrevocable, except as provided
718 in paragraph (f)~~(g)~~. Upon making such election, the employee
719 shall be enrolled as a member in the investment plan, the
720 employee's membership in the Florida Retirement System is
721 governed by the provisions of this part, and the employee's
722 participation in the State Community College System Optional
723 Retirement Program or the State University System Optional
724 Retirement Program terminates. The employee's enrollment in the
725 investment plan is effective on the first day of the month for
726 which a full month's employer and employee contribution is made
727 to the investment plan.
728 (b)1. With respect to employees who become eligible to

729 participate in the investment plan, except as provided in
730 paragraph (g), by reason of employment in a regularly
731 established position commencing on or after July 1, 2015, any
732 such employee shall be enrolled in the pension plan at the
733 commencement of employment and may, by the last business day of
734 the 8th month following the employee's month of hire, elect to
735 participate in the pension plan or the investment plan. Eligible
736 employees may make a plan election only if they are earning
737 service credit in an employer-employee relationship consistent
738 with s. 121.021(17)(b), excluding leaves of absence without pay.
739 2. The employee's election must be made in writing or by
740 electronic means and must be filed with the third-party
741 administrator. The election to participate in the pension plan
742 or investment plan is irrevocable, except as provided in
743 paragraph (f).
744 3. If the employee fails to make an election of the
745 pension plan or investment plan within 8 months following the
746 month of hire, the employee is deemed to have elected the
747 investment plan and will be defaulted into the investment plan
748 retroactively to the employee's date of employment. The
749 employee's option to participate in the pension plan is
750 forfeited, except as provided in paragraph (f).
751 4. The amount of the employee and employer contributions
752 paid before the default to the investment plan shall be
753 transferred to the investment plan and shall be placed in a
754 default fund as designated by the State Board of Administration.

755 The employee may move the contributions once an account is
756 activated in the investment plan.
757 5. Effective the first day of the month after an eligible
758 employee makes a plan election of the pension plan or investment
759 plan, or after the month of default to the investment plan, the
760 employee and employer shall pay the applicable contributions
761 based on the employee membership class in the program.
762 ~~4. For purposes of this paragraph, "state employer" means~~
763 ~~any agency, board, branch, commission, community college,~~
764 ~~department, institution, institution of higher education, or~~
765 ~~water management district of the state, which participates in~~
766 ~~the Florida Retirement System for the benefit of certain~~
767 ~~employees.~~
768 ~~(b)1. With respect to an eligible employee who is employed~~
769 ~~in a regularly established position on September 1, 2002, by a~~
770 ~~district school board employer:~~
771 ~~a. Any such employee may elect to participate in the~~
772 ~~investment plan in lieu of retaining his or her membership in~~
773 ~~the pension plan. The election must be made in writing or by~~
774 ~~electronic means and must be filed with the third-party~~
775 ~~administrator by November 30, or, in the case of an active~~
776 ~~employee who is on a leave of absence on July 1, 2002, by the~~
777 ~~last business day of the 5th month following the month the leave~~
778 ~~of absence concludes. This election is irrevocable, except as~~
779 ~~provided in paragraph (g). Upon making such election, the~~
780 ~~employee shall be enrolled as a member of the investment plan,~~

781 ~~the employee's membership in the Florida Retirement System is~~
782 ~~governed by the provisions of this part, and the employee's~~
783 ~~membership in the pension plan terminates. The employee's~~
784 ~~enrollment in the investment plan is effective the first day of~~
785 ~~the month for which a full month's employer contribution is made~~
786 ~~to the investment program.~~
787 ~~b. Any such employee who fails to elect to participate in~~
788 ~~the investment plan within the prescribed time period is deemed~~
789 ~~to have elected to retain membership in the pension plan, and~~
790 ~~the employee's option to elect to participate in the investment~~
791 ~~plan is forfeited.~~
792 ~~2. With respect to employees who become eligible to~~
793 ~~participate in the investment plan by reason of employment in a~~
794 ~~regularly established position with a district school board~~
795 ~~employer commencing after July 1, 2002:~~
796 ~~a. Any such employee shall, by default, be enrolled in the~~
797 ~~pension plan at the commencement of employment, and may, by the~~
798 ~~last business day of the 5th month following the employee's~~
799 ~~month of hire, elect to participate in the investment plan. The~~
800 ~~employee's election must be made in writing or by electronic~~
801 ~~means and must be filed with the third-party administrator. The~~
802 ~~election to participate in the investment plan is irrevocable,~~
803 ~~except as provided in paragraph (g).~~
804 ~~b. If the employee files such election within the~~
805 ~~prescribed time period, enrollment in the investment plan is~~
806 ~~effective on the first day of employment. The employer~~

807 ~~retirement contributions paid through the month of the employee~~
808 ~~plan change shall be transferred to the investment plan, and,~~
809 ~~effective the first day of the next month, the employer shall~~
810 ~~pay the applicable contributions based on the employee~~
811 ~~membership class in the investment plan.~~
812 ~~c. Any such employee who fails to elect to participate in~~
813 ~~the investment plan within the prescribed time period is deemed~~
814 ~~to have elected to retain membership in the pension plan, and~~
815 ~~the employee's option to elect to participate in the investment~~
816 ~~plan is forfeited.~~
817 ~~3. For purposes of this paragraph, "district school board~~
818 ~~employer" means any district school board that participates in~~
819 ~~the Florida Retirement System for the benefit of certain~~
820 ~~employees, or a charter school or charter technical career~~
821 ~~center that participates in the Florida Retirement System as~~
822 ~~provided in s. 121.051(2)(d).~~
823 ~~(c)1. With respect to an eligible employee who is employed~~
824 ~~in a regularly established position on December 1, 2002, by a~~
825 ~~local employer:~~
826 ~~a. Any such employee may elect to participate in the~~
827 ~~investment plan in lieu of retaining his or her membership in~~
828 ~~the pension plan. The election must be made in writing or by~~
829 ~~electronic means and must be filed with the third-party~~
830 ~~administrator by February 28, 2003, or, in the case of an active~~
831 ~~employee who is on a leave of absence on October 1, 2002, by the~~
832 ~~last business day of the 5th month following the month the leave~~

833 ~~of absence concludes. This election is irrevocable, except as~~
834 ~~provided in paragraph (g). Upon making such election, the~~
835 ~~employee shall be enrolled as a participant of the investment~~
836 ~~plan, the employee's membership in the Florida Retirement System~~
837 ~~is governed by the provisions of this part, and the employee's~~
838 ~~membership in the pension plan terminates. The employee's~~
839 ~~enrollment in the investment plan is effective the first day of~~
840 ~~the month for which a full month's employer contribution is made~~
841 ~~to the investment plan.~~
842 ~~b. Any such employee who fails to elect to participate in~~
843 ~~the investment plan within the prescribed time period is deemed~~
844 ~~to have elected to retain membership in the pension plan, and~~
845 ~~the employee's option to elect to participate in the investment~~
846 ~~plan is forfeited.~~
847 ~~2. With respect to employees who become eligible to~~
848 ~~participate in the investment plan by reason of employment in a~~
849 ~~regularly established position with a local employer commencing~~
850 ~~after October 1, 2002:~~
851 ~~a. Any such employee shall, by default, be enrolled in the~~
852 ~~pension plan at the commencement of employment, and may, by the~~
853 ~~last business day of the 5th month following the employee's~~
854 ~~month of hire, elect to participate in the investment plan. The~~
855 ~~employee's election must be made in writing or by electronic~~
856 ~~means and must be filed with the third-party administrator. The~~
857 ~~election to participate in the investment plan is irrevocable,~~
858 ~~except as provided in paragraph (g).~~

859 ~~b. If the employee files such election within the~~
860 ~~prescribed time period, enrollment in the investment plan is~~
861 ~~effective on the first day of employment. The employer~~
862 ~~retirement contributions paid through the month of the employee~~
863 ~~plan change shall be transferred to the investment plan, and,~~
864 ~~effective the first day of the next month, the employer shall~~
865 ~~pay the applicable contributions based on the employee~~
866 ~~membership class in the investment plan.~~
867 ~~c. Any such employee who fails to elect to participate in~~
868 ~~the investment plan within the prescribed time period is deemed~~
869 ~~to have elected to retain membership in the pension plan, and~~
870 ~~the employee's option to elect to participate in the investment~~
871 ~~plan is forfeited.~~
872 ~~3. For purposes of this paragraph, "local employer" means~~
873 ~~any employer not included in paragraph (a) or paragraph (b).~~
874 <u>(c)</u>~~(d)~~ Contributions available for self-direction by a
875 member who has not selected one or more specific investment
876 products shall be allocated as prescribed by the state board.
877 The third-party administrator shall notify the member at least
878 quarterly that the member should take an affirmative action to
879 make an asset allocation among the investment products.
880 <u>(d)</u>~~(e)~~ On or after July 1, 2011, a member of the pension
881 plan who obtains a refund of employee contributions retains his
882 or her prior plan choice upon return to employment in a
883 regularly established position with a participating employer.
884 <u>(e)</u>~~(f)~~ A member of the investment plan who takes a

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885 distribution of any contributions from his or her investment
886 plan account is considered a retiree. A retiree who is initially
887 reemployed in a regularly established position on or after July
888 1, 2010, is not eligible to be enrolled in renewed membership.
889 (f) ~~(g)~~ After the period during which an eligible employee
890 had the choice to elect the pension plan or the investment plan,
891 or the month following the receipt of the eligible employee's
892 plan election, if sooner, the employee shall have one
893 opportunity, at the employee's discretion, to choose to move
894 from the pension plan to the investment plan or from the
895 investment plan to the pension plan. Eligible employees may
896 elect to move between plans only if they are earning service
897 credit in an employer-employee relationship consistent with s.
898 121.021(17)(b), excluding leaves of absence without pay.
899 Effective July 1, 2005, such elections are effective on the
900 first day of the month following the receipt of the election by
901 the third-party administrator and are not subject to the
902 requirements regarding an employer-employee relationship or
903 receipt of contributions for the eligible employee in the
904 effective month, except when the election is received by the
905 third-party administrator. This paragraph is contingent upon
906 approval by the Internal Revenue Service. This paragraph is not
907 applicable to compulsory investment plan members under paragraph
908 (g).
909 1. If the employee chooses to move to the investment plan,
910 the provisions of subsection (3) govern the transfer.

911 2. If the employee chooses to move to the pension plan,
912 the employee must transfer from his or her investment plan
913 account, and from other employee moneys as necessary, a sum
914 representing the present value of that employee's accumulated
915 benefit obligation immediately following the time of such
916 movement, determined assuming that attained service equals the
917 sum of service in the pension plan and service in the investment
918 plan. Benefit commencement occurs on the first date the employee
919 is eligible for unreduced benefits, using the discount rate and
920 other relevant actuarial assumptions that were used to value the
921 pension plan liabilities in the most recent actuarial valuation.
922 For any employee who, at the time of the second election,
923 already maintains an accrued benefit amount in the pension plan,
924 the then-present value of the accrued benefit is deemed part of
925 the required transfer amount. The division must ensure that the
926 transfer sum is prepared using a formula and methodology
927 certified by an enrolled actuary. A refund of any employee
928 contributions or additional member payments made which exceed
929 the employee contributions that would have accrued had the
930 member remained in the pension plan and not transferred to the
931 investment plan is not permitted.
932 3. Notwithstanding subparagraph 2., an employee who
933 chooses to move to the pension plan and who became eligible to
934 participate in the investment plan by reason of employment in a
935 regularly established position with a state employer after June
936 1, 2002; a district school board employer after September 1,

937 2002; or a local employer after December 1, 2002, must transfer
938 from his or her investment plan account, and from other employee
939 moneys as necessary, a sum representing the employee's actuarial
940 accrued liability. A refund of any employee contributions or
941 additional member ~~participant~~ payments made which exceed the
942 employee contributions that would have accrued had the member
943 remained in the pension plan and not transferred to the
944 investment plan is not permitted.
945 4. An employee's ability to transfer from the pension plan
946 to the investment plan pursuant to paragraphs (a) and (b)
947 ~~paragraphs (a)-(d)~~, and the ability of a current employee to
948 have an option to later transfer back into the pension plan
949 under subparagraph 2., shall be deemed a significant system
950 amendment. Pursuant to s. 121.031(4), any resulting unfunded
951 liability arising from actual original transfers from the
952 pension plan to the investment plan must be amortized within 30
953 plan years as a separate unfunded actuarial base independent of
954 the reserve stabilization mechanism defined in s. 121.031(3)(f).
955 For the first 25 years, a direct amortization payment may not be
956 calculated for this base. During this 25-year period, the
957 separate base shall be used to offset the impact of employees
958 exercising their second program election under this paragraph.
959 The actuarial funded status of the pension plan will not be
960 affected by such second program elections in any significant
961 manner, after due recognition of the separate unfunded actuarial
962 base. Following the initial 25-year period, any remaining

963 balance of the original separate base shall be amortized over
964 the remaining 5 years of the required 30-year amortization
965 period.
966 5. If the employee chooses to transfer from the investment
967 plan to the pension plan and retains an excess account balance
968 in the investment plan after satisfying the buy-in requirements
969 under this paragraph, the excess may not be distributed until
970 the member retires from the pension plan. The excess account
971 balance may be rolled over to the pension plan and used to
972 purchase service credit or upgrade creditable service in the
973 pension plan.
974 (g)1. All employees initially enrolled on or after July 1,
975 2015, in positions covered by the Elected Officers' Class or the
976 Senior Management Service Class are compulsory members of the
977 investment plan, except those who withdraw from the system under
978 s. 121.052(3)(d) or s. 121.055(1)(b)2., or those who participate
979 in an optional retirement program under s. 121.051(1)(a), s.
980 121.051(2)(c), or s. 121.35. Employees eligible to withdraw from
981 the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may
982 choose to withdraw from the system or to participate in the
983 investment plan as provided in those sections. Employees
984 eligible for optional retirement programs under s. 121.051(2)(c)
985 or s. 121.35, except as provided in s. 121.051(1)(a), may choose
986 to participate in the optional retirement program or the
987 investment plan as provided in those sections. Investment plan
988 membership continues if there is subsequent employment in a

989 position covered by another membership class. Membership in the
990 pension plan is not permitted except as provided in s.
991 121.591(2). Employees initially enrolled in the Florida
992 Retirement System prior to July 1, 2015, may retain their
993 membership in the pension plan or investment plan and are
994 eligible to use the election opportunity specified in s.
995 121.4501(4)(f).
996 2. Employees initially enrolled on or after July 1, 2015,
997 in a position covered by the Elected Officers' Class or the
998 Senior Management Service Class are not permitted to use the
999 election opportunity specified in paragraph (f).
1000 3. The amount of retirement contributions paid by the
1001 employee and employer, as required under s. 121.72, shall be
1002 placed in a default fund as designated by the state board, until
1003 an account is activated in the investment plan, at which time
1004 the member may move the contributions from the default fund to
1005 other funds provided in the investment plan.
1006 (5) CONTRIBUTIONS.—
1007 (c) The state board, acting as plan fiduciary, must ensure
1008 that all plan assets are held in a trust, pursuant to s. 401 of
1009 the Internal Revenue Code. The fiduciary must ensure that such
1010 contributions are allocated as follows:
1011 1. The employer and employee contribution portion
1012 earmarked for member accounts shall be used to purchase
1013 interests in the appropriate investment vehicles as specified by
1014 the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

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1015 2. The employer contribution portion earmarked for
1016 administrative and educational expenses shall be transferred to
1017 the Florida Retirement System Investment Plan Trust Fund.
1018 3. The employer contribution portion earmarked for
1019 disability benefits shall be transferred to the Florida
1020 Retirement System Trust Fund.
1021 (8) INVESTMENT PLAN ADMINISTRATION.—The investment plan
1022 shall be administered by the state board and affected employers.
1023 The state board may require oaths, by affidavit or otherwise,
1024 and acknowledgments from persons in connection with the
1025 administration of its statutory duties and responsibilities for
1026 the investment plan. An oath, by affidavit or otherwise, may not
1027 be required of a member at the time of enrollment.
1028 Acknowledgment of an employee's election to participate in the
1029 program shall be no greater than necessary to confirm the
1030 employee's election except for members initially enrolled on or
1031 after July 1, 2015, as provided in paragraph (4)(g). The state
1032 board shall adopt rules to carry out its statutory duties with
1033 respect to administering the investment plan, including
1034 establishing the roles and responsibilities of affected state,
1035 local government, and education-related employers, the state
1036 board, the department, and third-party contractors. The
1037 department shall adopt rules necessary to administer the
1038 investment plan in coordination with the pension plan and the
1039 disability benefits available under the investment plan.
1040 (a)1. The state board shall select and contract with a

1041 third-party administrator to provide administrative services if
1042 those services cannot be competitively and contractually
1043 provided by the division. With the approval of the state board,
1044 the third-party administrator may subcontract to provide
1045 components of the administrative services. As a cost of
1046 administration, the state board may compensate any such
1047 contractor for its services, in accordance with the terms of the
1048 contract, as is deemed necessary or proper by the board. The
1049 third-party administrator may not be an approved provider or be
1050 affiliated with an approved provider.
1051 2. These administrative services may include, but are not
1052 limited to, enrollment of eligible employees, collection of
1053 employer and employee contributions, disbursement of
1054 contributions to approved providers in accordance with the
1055 allocation directions of members; services relating to
1056 consolidated billing; individual and collective recordkeeping
1057 and accounting; asset purchase, control, and safekeeping; and
1058 direct disbursement of funds to and from the third-party
1059 administrator, the division, the state board, employers,
1060 members, approved providers, and beneficiaries. This section
1061 does not prevent or prohibit a bundled provider from providing
1062 any administrative or customer service, including accounting and
1063 administration of individual member benefits and contributions;
1064 individual member recordkeeping; asset purchase, control, and
1065 safekeeping; direct execution of the member's instructions as to
1066 asset and contribution allocation; calculation of daily net

1067 asset values; direct access to member account information; or
1068 periodic reporting to members, at least quarterly, on account
1069 balances and transactions, if these services are authorized by
1070 the state board as part of the contract.
1071 (b)1. The state board shall select and contract with one
1072 or more organizations to provide educational services. With
1073 approval of the state board, the organizations may subcontract
1074 to provide components of the educational services. As a cost of
1075 administration, the state board may compensate any such
1076 contractor for its services in accordance with the terms of the
1077 contract, as is deemed necessary or proper by the board. The
1078 education organization may not be an approved provider or be
1079 affiliated with an approved provider.
1080 2. Educational services shall be designed by the state
1081 board and department to assist employers, eligible employees,
1082 members, and beneficiaries in order to maintain compliance with
1083 United States Department of Labor regulations under s. 404(c) of
1084 the Employee Retirement Income Security Act of 1974 and to
1085 assist employees in their choice of pension plan or investment
1086 plan retirement alternatives. Educational services include, but
1087 are not limited to, disseminating educational materials;
1088 providing retirement planning education; explaining the pension
1089 plan and the investment plan; and offering financial planning
1090 guidance on matters such as investment diversification,
1091 investment risks, investment costs, and asset allocation. An
1092 approved provider may also provide educational information,

1093 including retirement planning and investment allocation
1094 information concerning its products and services.
1095 (c)1. In evaluating and selecting a third-party
1096 administrator, the state board shall establish criteria for
1097 evaluating the relative capabilities and qualifications of each
1098 proposed administrator. In developing such criteria, the state
1099 board shall consider:
1100 a. The administrator's demonstrated experience in
1101 providing administrative services to public or private sector
1102 retirement systems.
1103 b. The administrator's demonstrated experience in
1104 providing daily valued recordkeeping to defined contribution
1105 programs.
1106 c. The administrator's ability and willingness to
1107 coordinate its activities with employers, the state board, and
1108 the division, and to supply to such employers, the board, and
1109 the division the information and data they require, including,
1110 but not limited to, monthly management reports, quarterly member
1111 reports, and ad hoc reports requested by the department or state
1112 board.
1113 d. The cost-effectiveness and levels of the administrative
1114 services provided.
1115 e. The administrator's ability to interact with the
1116 members, the employers, the state board, the division, and the
1117 providers; the means by which members may access account
1118 information, direct investment of contributions, make changes to

1119 their accounts, transfer moneys between available investment
1120 vehicles, and transfer moneys between investment products; and
1121 any fees that apply to such activities.
1122 f. Any other factor deemed necessary by the state board.
1123 2. In evaluating and selecting an educational provider,
1124 the state board shall establish criteria under which it shall
1125 consider the relative capabilities and qualifications of each
1126 proposed educational provider. In developing such criteria, the
1127 state board shall consider:
1128 a. Demonstrated experience in providing educational
1129 services to public or private sector retirement systems.
1130 b. Ability and willingness to coordinate its activities
1131 with the employers, the state board, and the division, and to
1132 supply to such employers, the board, and the division the
1133 information and data they require, including, but not limited
1134 to, reports on educational contacts.
1135 c. The cost-effectiveness and levels of the educational
1136 services provided.
1137 d. Ability to provide educational services via different
1138 media, including, but not limited to, the Internet, personal
1139 contact, seminars, brochures, and newsletters.
1140 e. Any other factor deemed necessary by the state board.
1141 3. The establishment of the criteria shall be solely
1142 within the discretion of the state board.
1143 (d) The state board shall develop the form and content of
1144 any contracts to be offered under the investment plan. In

1145 developing the contracts, the board shall consider:
1146 1. The nature and extent of the rights and benefits to be
1147 afforded in relation to the contributions required under the
1148 plan.
1149 2. The suitability of the rights and benefits provided and
1150 the interests of employers in the recruitment and retention of
1151 eligible employees.
1152 (e)1. The state board may contract for professional
1153 services, including legal, consulting, accounting, and actuarial
1154 services, deemed necessary to implement and administer the
1155 investment plan. The state board may enter into a contract with
1156 one or more vendors to provide low-cost investment advice to
1157 members, supplemental to education provided by the third-party
1158 administrator. All fees under any such contract shall be paid by
1159 those members who choose to use the services of the vendor.
1160 2. The department may contract for professional services,
1161 including legal, consulting, accounting, and actuarial services,
1162 deemed necessary to implement and administer the investment plan
1163 in coordination with the pension plan. The department, in
1164 coordination with the state board, may enter into a contract
1165 with the third-party administrator in order to coordinate
1166 services common to the various programs within the Florida
1167 Retirement System.
1168 (f) The third-party administrator may not receive direct
1169 or indirect compensation from an approved provider, except as
1170 specifically provided for in the contract with the state board.

1171 (g) The state board shall receive and resolve member
1172 complaints against the program, the third-party administrator,
1173 or any program vendor or provider; shall resolve any conflict
1174 between the third-party administrator and an approved provider
1175 if such conflict threatens the implementation or administration
1176 of the program or the quality of services to employees; and may
1177 resolve any other conflicts. The third-party administrator shall
1178 retain all member records for at least 5 years for use in
1179 resolving any member conflicts. The state board, the third-party
1180 administrator, or a provider is not required to produce
1181 documentation or an audio recording to justify action taken with
1182 regard to a member if the action occurred 5 or more years before
1183 the complaint is submitted to the state board. It is presumed
1184 that all action taken 5 or more years before the complaint is
1185 submitted was taken at the request of the member and with the
1186 member's full knowledge and consent. To overcome this
1187 presumption, the member must present documentary evidence or an
1188 audio recording demonstrating otherwise.
1189 (10) EDUCATION COMPONENT.—
1190 (a) The state board, in coordination with the department,
1191 shall provide for an education component for eligible employees
1192 ~~system members~~ in a manner consistent with the provisions of
1193 this subsection ~~section~~. ~~The education component must be~~
1194 ~~available to eligible employees at least 90 days prior to the~~
1195 ~~beginning date of the election period for the employees of the~~
1196 ~~respective types of employers.~~

1197 (b) The education component must provide system members
1198 with impartial and balanced information about plan choices
1199 except for members initially enrolled on or after July 1, 2015,
1200 as provided in paragraph (4)(g). The education component must
1201 involve multimedia formats. Program comparisons must, to the
1202 greatest extent possible, be based upon the retirement income
1203 that different retirement programs may provide to the member.
1204 The state board shall monitor the performance of the contract to
1205 ensure that the program is conducted in accordance with the
1206 contract, applicable law, and the rules of the state board.
1207 (c) The state board, in coordination with the department,
1208 shall provide for an initial and ongoing transfer education
1209 component to provide system members except for those members
1210 initially enrolled on or after July 1, 2015, as provided in
1211 paragraph (4)(g), with information necessary to make informed
1212 plan choice decisions. The transfer education component must
1213 include, but is not limited to, information on:
1214 1. The amount of money available to a member to transfer
1215 to the defined contribution program.
1216 2. The features of and differences between the pension
1217 plan and the defined contribution program, both generally and
1218 specifically, as those differences may affect the member.
1219 3. The expected benefit available if the member were to
1220 retire under each of the retirement programs, based on
1221 appropriate alternative sets of assumptions.
1222 4. The rate of return from investments in the defined

1223 contribution program and the period of time over which such rate
1224 of return must be achieved to equal or exceed the expected
1225 monthly benefit payable to the member under the pension plan.
1226 5. The historical rates of return for the investment
1227 alternatives available in the defined contribution programs.
1228 6. The benefits and historical rates of return on
1229 investments available in a typical deferred compensation plan or
1230 a typical plan under s. 403(b) of the Internal Revenue Code for
1231 which the employee may be eligible.
1232 7. The program choices available to employees of the State
1233 University System and the comparative benefits of each available
1234 program, if applicable.
1235 8. Payout options available in each of the retirement
1236 programs.
1237 ~~(h) Pursuant to subsection (8), all Florida Retirement~~
1238 ~~System employers have an obligation to regularly communicate the~~
1239 ~~existence of the two Florida Retirement System plans and the~~
1240 ~~plan choice in the natural course of administering their~~
1241 ~~personnel functions, using the educational materials supplied by~~
1242 ~~the state board and the Department of Management Services.~~
1243 Section 7. Paragraph (b) of subsection (2) of section
1244 121.591, Florida Statutes, is amended to read:
1245 121.591 Payment of benefits.—Benefits may not be paid
1246 under the Florida Retirement System Investment Plan unless the
1247 member has terminated employment as provided in s.
1248 121.021(39)(a) or is deceased and a proper application has been

1249 filed as prescribed by the state board or the department.
1250 Benefits, including employee contributions, are not payable
1251 under the investment plan for employee hardships, unforeseeable
1252 emergencies, loans, medical expenses, educational expenses,
1253 purchase of a principal residence, payments necessary to prevent
1254 eviction or foreclosure on an employee's principal residence, or
1255 any other reason except a requested distribution for retirement,
1256 a mandatory de minimis distribution authorized by the
1257 administrator, or a required minimum distribution provided
1258 pursuant to the Internal Revenue Code. The state board or
1259 department, as appropriate, may cancel an application for
1260 retirement benefits if the member or beneficiary fails to timely
1261 provide the information and documents required by this chapter
1262 and the rules of the state board and department. In accordance
1263 with their respective responsibilities, the state board and the
1264 department shall adopt rules establishing procedures for
1265 application for retirement benefits and for the cancellation of
1266 such application if the required information or documents are
1267 not received. The state board and the department, as
1268 appropriate, are authorized to cash out a de minimis account of
1269 a member who has been terminated from Florida Retirement System
1270 covered employment for a minimum of 6 calendar months. A de
1271 minimis account is an account containing employer and employee
1272 contributions and accumulated earnings of not more than $5,000
1273 made under the provisions of this chapter. Such cash-out must be
1274 a complete lump-sum liquidation of the account balance, subject

1275 to the provisions of the Internal Revenue Code, or a lump-sum
1276 direct rollover distribution paid directly to the custodian of
1277 an eligible retirement plan, as defined by the Internal Revenue
1278 Code, on behalf of the member. Any nonvested accumulations and
1279 associated service credit, including amounts transferred to the
1280 suspense account of the Florida Retirement System Investment
1281 Plan Trust Fund authorized under s. 121.4501(6), shall be
1282 forfeited upon payment of any vested benefit to a member or
1283 beneficiary, except for de minimis distributions or minimum
1284 required distributions as provided under this section. If any
1285 financial instrument issued for the payment of retirement
1286 benefits under this section is not presented for payment within
1287 180 days after the last day of the month in which it was
1288 originally issued, the third-party administrator or other duly
1289 authorized agent of the state board shall cancel the instrument
1290 and credit the amount of the instrument to the suspense account
1291 of the Florida Retirement System Investment Plan Trust Fund
1292 authorized under s. 121.4501(6). Any amounts transferred to the
1293 suspense account are payable upon a proper application, not to
1294 include earnings thereon, as provided in this section, within 10
1295 years after the last day of the month in which the instrument
1296 was originally issued, after which time such amounts and any
1297 earnings attributable to employer contributions shall be
1298 forfeited. Any forfeited amounts are assets of the trust fund
1299 and are not subject to chapter 717.
1300 (2) DISABILITY RETIREMENT BENEFITS.—Benefits provided

1301 under this subsection are payable in lieu of the benefits that
1302 would otherwise be payable under the provisions of subsection
1303 (1). Such benefits must be funded from employer contributions
1304 made under s. 121.571, transferred employee contributions and
1305 funds accumulated pursuant to paragraph (a), and interest and
1306 earnings thereon.
1307 (b) Disability retirement; entitlement.—
1308 1.a. A member of the investment plan initially enrolled
1309 before July 1, 2015, who becomes totally and permanently
1310 disabled, as defined in paragraph (d), after completing 8 years
1311 of creditable service, or a member who becomes totally and
1312 permanently disabled in the line of duty regardless of length of
1313 service, is entitled to a monthly disability benefit.
1314 b. A member of the investment plan initially enrolled on
1315 or after July 1, 2015, who becomes totally and permanently
1316 disabled, as defined in paragraph (d), after completing 10 years
1317 of creditable service, or a member who becomes totally and
1318 permanently disabled in the line of duty regardless of service,
1319 is entitled to a monthly disability benefit.
1320 2. In order for service to apply toward the ~~8~~ years of
1321 creditable service required for regular disability benefits, or
1322 toward the creditable service used in calculating a service-
1323 based benefit as provided under paragraph (g), the service must
1324 be creditable service as described below:
1325 a. The member's period of service under the investment
1326 plan shall be considered creditable service, except as provided

1327 in subparagraph d.
1328 b. If the member has elected to retain credit for service
1329 under the pension plan as provided under s. 121.4501(3), all
1330 such service shall be considered creditable service.
1331 c. If the member elects to transfer to his or her member
1332 accounts a sum representing the present value of his or her
1333 retirement credit under the pension plan as provided under s.
1334 121.4501(3), the period of service under the pension plan
1335 represented in the present value amounts transferred shall be
1336 considered creditable service, except as provided in
1337 subparagraph d.
1338 d. If a member has terminated employment and has taken
1339 distribution of his or her funds as provided in subsection (1),
1340 all creditable service represented by such distributed funds is
1341 forfeited for purposes of this subsection.
1342 Section 8. Paragraph (a) of subsection (4) of section
1343 121.35, Florida Statutes, is amended to read:
1344 121.35 Optional retirement program for the State
1345 University System.—
1346 (4) CONTRIBUTIONS.—
1347 (a)1. Through June 30, 2001, each employer shall
1348 contribute on behalf of each member of the optional retirement
1349 program an amount equal to the normal cost portion of the
1350 employer retirement contribution which would be required if the
1351 employee were a regular member of the Florida Retirement System
1352 Pension Plan, plus the portion of the contribution rate required

1353 in s. 112.363(8) that would otherwise be assigned to the Retiree
1354 Health Insurance Subsidy Trust Fund.
1355 2. Effective July 1, 2001, through June 30, 2011, each
1356 employer shall contribute on behalf of each member of the
1357 optional retirement program an amount equal to 10.43 percent of
1358 the employee's gross monthly compensation.
1359 3. Effective July 1, 2011, through June 30, 2012, each
1360 member of the optional retirement program shall contribute an
1361 amount equal to the employee contribution required in s.
1362 121.71(3)(a). The employer shall contribute on behalf of each
1363 such member an amount equal to the difference between 10.43
1364 percent of the employee's gross monthly compensation and the
1365 amount equal to the employee's required contribution based on
1366 the employee's gross monthly compensation.
1367 4. Effective July 1, 2012, each member of the optional
1368 retirement program shall contribute an amount equal to the
1369 employee contribution required in s. 121.71(3)(a). The employer
1370 shall contribute on behalf of each such member an amount equal
1371 to the difference between 8.15 percent of the employee's gross
1372 monthly compensation and the amount equal to the employee's
1373 required contribution based on the employee's gross monthly
1374 compensation.
1375 5. The payment of the contributions, including
1376 contributions by the employee, shall be made by the employer to
1377 the department, which shall forward the contributions to the
1378 designated company or companies contracting for payment of

1379 benefits for members of the program. However, such contributions
1380 paid on behalf of an employee described in paragraph (3)(c) may
1381 not be forwarded to a company and do not begin to accrue
1382 interest until the employee has executed a contract and notified
1383 the department. The department shall deduct an amount from the
1384 contributions to provide for the administration of this program.
1385 Section 9. Section 238.072, Florida Statutes, is amended
1386 to read:
1387 238.072 Special service provisions for extension
1388 personnel.—All state and county cooperative extension personnel
1389 holding appointments by the United States Department of
1390 Agriculture for extension work in agriculture and home economics
1391 in this state who are joint representatives of the University of
1392 Florida and the United States Department of Agriculture, as
1393 provided in s. 121.051(8) ~~121.051(7)~~, who are members of the
1394 Teachers' Retirement System, chapter 238, and who are prohibited
1395 from transferring to and participating in the Florida Retirement
1396 System, chapter 121, may retire with full benefits upon
1397 completion of 30 years of creditable service and shall be
1398 considered to have attained normal retirement age under this
1399 chapter, any law to the contrary notwithstanding. In order to
1400 comply with the provisions of s. 14, Art. X of the State
1401 Constitution, any liability accruing to the Florida Retirement
1402 System Trust Fund as a result of the provisions of this section
1403 shall be paid on an annual basis from the General Revenue Fund.
1404 Section 10. Subsection (11) of section 413.051, Florida

1405 Statutes, is amended to read:
1406 413.051 Eligible blind persons; operation of vending
1407 stands.—
1408 (11) Effective July 1, 1996, blind licensees who remain
1409 members of the Florida Retirement System pursuant to s.
1410 <u>121.051(7)(b)1.</u> ~~121.051(6)(b)1.~~ shall pay any unappropriated
1411 retirement costs from their net profits or from program income.
1412 Within 30 days after the effective date of this act, each blind
1413 licensee who is eligible to maintain membership in the Florida
1414 Retirement System under s. <u>121.051(7)(b)1.</u> ~~121.051(6)(b)1.~~, but
1415 who elects to withdraw from the system as provided in s.
1416 <u>121.051(7)(b)3.</u> ~~121.051(6)(b)3.~~, must, on or before July 31,
1417 1996, notify the Division of Blind Services and the Department
1418 of Management Services in writing of his or her election to
1419 withdraw. Failure to timely notify the divisions shall be deemed
1420 a decision to remain a compulsory member of the Florida
1421 Retirement System. However, if, at any time after July 1, 1996,
1422 sufficient funds are not paid by a blind licensee to cover the
1423 required contribution to the Florida Retirement System, that
1424 blind licensee shall become ineligible to participate in the
1425 Florida Retirement System on the last day of the first month for
1426 which no contribution is made or the amount contributed is
1427 insufficient to cover the required contribution. For any blind
1428 licensee who becomes ineligible to participate in the Florida
1429 Retirement System as described in this subsection, no creditable
1430 service shall be earned under the Florida Retirement System for

1431 any period following the month that retirement contributions
1432 ceased to be reported. However, any such person may participate
1433 in the Florida Retirement System in the future if employed by a
1434 participating employer in a covered position.
1435 Section 11. Paragraph (a) of subsection (4) of section
1436 1012.875, Florida Statutes, is amended to read:
1437 1012.875 State Community College System Optional
1438 Retirement Program.—Each Florida College System institution may
1439 implement an optional retirement program, if such program is
1440 established therefor pursuant to s. 1001.64(20), under which
1441 annuity or other contracts providing retirement and death
1442 benefits may be purchased by, and on behalf of, eligible
1443 employees who participate in the program, in accordance with s.
1444 403(b) of the Internal Revenue Code. Except as otherwise
1445 provided herein, this retirement program, which shall be known
1446 as the State Community College System Optional Retirement
1447 Program, may be implemented and administered only by an
1448 individual Florida College System institution or by a consortium
1449 of Florida College System institutions.
1450 (4)(a)1. Through June 30, 2011, each college must
1451 contribute on behalf of each program member an amount equal to
1452 10.43 percent of the employee's gross monthly compensation.
1453 2. Effective July 1, 2011, through June 30, 2012, each
1454 member shall contribute an amount equal to the employee
1455 contribution required under s. 121.71(3)<u>(a)</u>. The employer shall
1456 contribute on behalf of each program member an amount equal to

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

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1457 the difference between 10.43 percent of the employee's gross
1458 monthly compensation and the employee's required contribution
1459 based on the employee's gross monthly compensation.
1460 3. Effective July 1, 2012, each member shall contribute an
1461 amount equal to the employee contribution required under s.
1462 121.71(3)(a). The employer shall contribute on behalf of each
1463 program member an amount equal to the difference between 8.15
1464 percent of the employee's gross monthly compensation and the
1465 employee's required contribution based on the employee's gross
1466 monthly compensation.
1467 4. The college shall deduct an amount approved by the
1468 district board of trustees of the college to provide for the
1469 administration of the optional retirement program. Payment of
1470 this contribution must be made directly by the college or
1471 through the program administrator to the designated company
1472 contracting for payment of benefits to the program member.
1473 Section 12. The Legislature finds that a proper and
1474 legitimate state purpose is served when employees and retirees
1475 of the state and its political subdivisions, and the dependents,
1476 survivors, and beneficiaries of such employees and retirees, are
1477 extended the basic protections afforded by governmental
1478 retirement systems. These persons must be provided benefits that
1479 are fair and adequate and that are managed, administered, and
1480 funded in an actuarially sound manner, as required by s. 14,
1481 Article X of the State Constitution and part VII of chapter 112,
1482 Florida Statutes. Therefore, the Legislature determines and

1483 declares that this act fulfills an important state interest.

1484 Section 13. Except as otherwise expressly provided in this

1485 act, this act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 14-03 Ratification of Rules/Department of Environmental Protection
SPONSOR(S): State Affairs Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) or the five water management districts (WMDs) are required to establish minimum flows for surface watercourses and minimum levels for groundwater and surface waters within each district. "Minimum flow" is the limit at which further water withdrawals from a given watercourse would significantly harm the water resources or ecology of the area. "Minimum level" is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area.

For waterbodies that are below their minimum flows and levels (MFLs) or are projected to fall below them within 20 years, the WMDs are required to implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing MFL from falling below the established MFL. The recovery or prevention strategy must include phasing or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals.

In June 2013, the Suwannee River Water Management District (SRWMD) governing board requested that DEP adopt MFLs it proposed for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs. The decision was based on the technical work conducted for the proposed MFLs by SRWMD staff, and the potential for cross-basin impacts originating outside of the SRWMD. SRWMD staff had also assessed the streamflows observed in the recent historical record and recent trends in the flow regime, and determined that a recovery strategy was required.

On March 7, 2014, DEP proposed Rule 62-42.300, F.A.C., establishing MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs, as well as regulatory flow recovery provisions. The proposed rule is estimated to have an economic impact in excess of $1 million over 5 years. If an agency rule meets that economic threshold, current law requires legislative ratification of the rule before it can take effect. However, an agency rule may not be ratified by the Legislature until it has been adopted by the agency. Due to the notice requirements in the Administrative Procedures Act, DEP will not be able to adopt the proposed rule until 28 days after the day the rule was proposed, which was March 7, 2014. A rulemaking hearing is scheduled for April 3, 2014. If no substantive changes to the proposed rule are required, DEP could file the rule for adoption as early as April 17, 2014. However, if DEP must publish a notice of modification, or if a challenge to the proposed rule is filed and must be litigated, the rule may not be available for consideration for ratification before the end of the 2014 Regular Session. According to DEP, it is critical for the rule to take effect as soon as possible because delays could further exacerbate the condition of the rivers and their assorted springs.

The bill exempts the proposed rule from the legislative ratification requirement. The bill also requires DEP to publish, when the rules are adopted, notice of the exemption from ratification. This exemption applies only to the proposed rule and not to future amendments to the rule. The bill expressly states that it serves no purpose other than exempting the rule from the ratification requirement and that it will not be codified in the Florida Statutes.

The bill does not appear to have a fiscal impact on state government. According to DEP's Statement of Estimated Regulatory Costs (SERC), implementation of the proposed rule being exempted from ratification in the bill will result in a negative fiscal impact of $300,000 on the SRWMD. The bill itself does not have a direct fiscal impact on the private sector; however, the substantive policy of the rule being exempted is expected to have an economic impact on the private sector. Those impacts are analyzed in DEP's SERC for the rule. In summary, the SERC estimates that the proposed rule will have a negative fiscal impact of $3 million over a five-year timeframe on agricultural users that are required to eliminate or reduce the impact of new proposed withdrawal quantities on the MFLs. (See Fiscal Analysis Section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Consumptive Use Permits

For water uses other than private wells for domestic use, the statutes authorize the Department of Environmental Protection (DEP) and the water management districts (WMDs) to require any person seeking to use "waters in the state"[1] to obtain a consumptive use permit (CUP).[2] A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area.[3] To obtain a CUP, an applicant must establish that the proposed use of water satisfies a statutory test, commonly referred to as "the three-prong test."[4] Specifically, the proposed water use:

1. Must be a reasonable-beneficial use;[5]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.

Minimum Flows and Levels (MFLs)

DEP or the five water management districts (WMDs) are required to establish minimum flows for surface watercourses and minimum levels for groundwater and surface waters within each district.[6] "Minimum flow" is the limit at which further water withdrawals from a given watercourse would significantly harm the water resources or ecology of the area.[7] "Minimum level" is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area.[8]

Section 373.042(2), F.S., requires each WMD to submit annually to DEP for review and approval a priority list and schedule for the establishment of MFLs for surface watercourses, aquifers, and surface waters within the WMD. The priority list and schedule must identify those waterbodies for which the WMD will voluntarily undertake independent scientific peer review. The priority list and schedule must also identify:

- Any reservations proposed by the WMD to be established under s. 373.223(4), F.S.;[9] and
- Those listed waterbodies that have the potential to be affected by withdrawals in an adjacent WMD for which the DEP adoption of a reservation or MFL may be appropriate.

[1] 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.
[2] Section 373.219, F.S.
[3] Section 373.219, F.S.
[4] Section 373.223, F.S.
[5] 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.
[6] Section 373.042(1), F.S.
[7] Section 373.042(1)(a), F.S.
[8] Section 373.042(1)(b), F.S.
[9] Section 373.223(4), F.S., provides that the governing board or DEP can reserve from use by permit applicants water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. These reservations must be subject to periodic review and revision in light of changed conditions. However, all presently existing legal uses of water must be protected so long as such use is not contrary to the public interest.

The WMDs use science that includes a variety of the best available information including meteorological, hydrological, and ecological data that typically includes a historical range of drought and flood conditions to establish scientifically the point beyond which additional withdrawals would cause significant harm.[10] Usually, a WMD selects a peer review committee to evaluate the scientific principles and methods used to establish MFLs. Once an MFL is calculated, it is adopted by rule and implemented by the district.[11]

For a waterbody that is below an MFL or is projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing MFL from falling below the established MFL.[12] The recovery or prevention strategy must include phasing or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses,[13] including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals.[14]

A WMD is required to provide DEP with technical information and staff support for the development of a reservation, MFL, or recovery or prevention strategy to be adopted by DEP by rule.[15] Furthermore, a WMD is required to apply any reservation, MFL, or recovery or prevention strategy adopted by DEP by rule without the WMD's adoption by rule of a reservation, MFL, or recovery or prevention strategy.[16]

Lower Santa Fe and Ichetucknee Rivers and Associated Springs

The Ichetucknee River and springs are part of the Ichetucknee Springs State Park. The park is a high quality natural area that is partly developed and whose heavy public use is highly regulated in order to minimize damage to the environment.[17] The Ichetucknee River has 11 springs that include one first magnitude spring,[18] seven second magnitude springs,[19] two third magnitude springs,[20] and one whose magnitude is unknown. A list of these springs can be found in Appendix A at the end of this analysis.

O'Leno State Park is located on the Santa Fe River and is also very popular due to the many springs on the Santa Fe River. The Santa Fe River has 67 springs that include 10 first magnitude springs, 23 second magnitude springs, 20 third magnitude springs, 8 fourth magnitude springs,[21] and 6 whose magnitude are unknown. A list of these springs can be found in Appendix A at the end of this analysis.

The following table shows the park attendance for each state park for the last five fiscal years:

	FY 2008/2009	FY 2009/2010	FY 2010/2011	FY 2011/2012	FY 2012/2013
O'Leno	63,625	58,586	63,023	63,035	71,429
Ichetucknee	161,990	184,151	204,586	148,213	135,923

[10] Minimum Flows and Levels Fact Sheet: Lower Santa Fe and Ichetucknee Rivers and Priority Springs Protecting Water Resources from Significant Harm. *See* Suwannee River Water Management District's website, available at http://www.mysuwanneeriver.com/Search/Results?searchPhrase=MFL+fact+sheet&page=1&perPage=10. On file with the House Agriculture & Natural Resources Subcommittee.
[11] Central Florida Water Initiative website; available at http://cfwiwater.com/MFLs.html.
[12] Section 373.0421(2), F.S.
[13] 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.
[14] Section 373.0421(2), F.S.
[15] Section 373.042(4), F.S.
[16] *Id.*
[17] Florida Geological Survey, Bulletin No.66, Springs of Florida, DEP; available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm.
[18] First magnitude springs discharge 64 million gallons of water per day (MGD).
[19] Second magnitude springs discharge 6.46 to 64.6 MGD.
[20] Third magnitude springs discharge 0.0646 to 6.46 MGD.
[21] Fourth magnitude springs discharge 448 gallons of water per minute.

Proposed MFL Rules for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs

The Lower Santa Fe and Ichetucknee Rivers are water bodies that have the potential to be affected by withdrawals in an adjacent WMD for which the DEP adoption of a reservation or MFL is required pursuant to s. 373.042(2), F.S. Consequently, the Suwannee River WMD (SRWMD) governing board requested that DEP adopt MFLs it proposed for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs In June, 2013. The decision to make the request was also based on the technical work conducted for the proposed MFLs by SRWMD staff.[22] SRWMD staff had also assessed the streamflows observed in the recent historical record and recent trends in the flow regime, and determined that a recovery strategy was required.[23]

The science for analysis preferred in establishing the MFL as described above in the MFL section, shows that the Lower Santa Fe River and its associated priority springs are in "recovery," meaning that they have fallen below their proposed MFL.[24] The flow is 17 cubic feet per second (CFS), or 11 million gallons per day (MGD), *below* the proposed MFL at the river gage near Fort White. The MFL science shows that the Ichetucknee River and its associated priority springs are also in "recovery." The flow is 3 CFS or 2 MGD below the proposed MFL at the river gage located at the US 27 Bridge.

On March 7, 2014, DEP proposed Rules 62.42.100 and 62.42.200, F.A.C., providing the scope and definitions for DEP-adopted MFLs. DEP also proposed Rule 62.42.300, F.A.C., establishing MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs, as well as regulatory flow recovery provisions. The rules will apply to the SRWMD and the St. Johns River WMD (SJRWMD).

Proposed Rule 62-42.300, F.A.C., also adopts and incorporates by reference a document entitled "Supplemental Regulatory Measures," which contains regulatory provisions for the MFLs proposed for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs. The proposed rule will apply to renewal and new consumptive use permit applications for withdrawals within the SRWMD and Planning Region 1 of the SJRWMD.[25] Only those applications proposing new or additional withdrawal quantities that impact the Lower Santa Fe and Ichetucknee Rivers and Priority Springs MFLs will be subject to additional regulatory costs as a result of the proposed rule. These applications will be required to eliminate or reduce the impact of the new proposed withdrawal quantities on the MFLs. The proposed rule can be generally divided into two components, summarized as follows:[26]

1. Additional Review Criteria for all Individual Water Use Permit Applicants:
   - Primarily defines how the existing requirements that proposed water uses not cause harm to water resources will be addressed in the water use permitting review process with regard to the proposed MFLs.
   - Ensures that the impact of new withdrawals or increases in permitted water use will be eliminated or offset as a condition for issuance of a water use permit.
   - Provides protections for existing uses by specifying that existing uses that do not request increases in water use are considered consistent with the Recovery Strategy. Existing users

[22] *See* s. 373.042(4), F.S.
[23] DEP Statement of Estimated Regulatory Costs; available at http://www.dep.state.fl.us/water/waterpolicy/mflrulemaking.htm. On file with the House Agriculture & Natural Resources Subcommittee.
[24] The information in this paragraph was obtained from the *Minimum Flows and Levels Fact Sheet: Lower Santa Fe and Ichetucknee Rivers and Priority Springs Protecting Water Resources from Significant Harm. See* Suwannee River Water Management District's website, available at http://www.mysuwanneeriver.com/Search/Results?searchPhrase=MFL+fact+sheet&page=1&perPage=10. On file with the House Agriculture & Natural Resources Subcommittee.
[25] Region 1 includes Alachua, Baker, Bradford, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns counties. Planning in this area is conducted as part of the North Florida Regional Water Supply Partnership in coordination with the SRWMD. *See* St. Johns River Water Management District website, available at http://floridaswater.com/watersupply/planning.html.
[26] Minimum Flows and Levels Fact Sheet: Lower Santa Fe and Ichetucknee Rivers and Priority Springs Protecting Water Resources from Significant Harm. *See* Suwannee River Water Management District's website, available at http://www.mysuwanneeriver.com/Search/Results?searchPhrase=MFL+fact+sheet&page=1&perPage=10. On file with the House Agriculture & Natural Resources Subcommittee.

who request new quantities will only be required to offset the impacts of their increase in water use, and not their existing use.

- Establishes that the WMD may use the best available information and modeling tools to evaluate the potential impacts of proposed water uses to MFL water bodies.
- Provides that the additional review criteria for individual water use permit applications will be implemented in the entirety of the SRWMD and the portion of the North Florida Regional Water Supply Planning Area in SJRWMD.

2. Additional Individual Permit Conditions:
    - Establishes two new special conditions that will be applied to new or renewed water use permits:
        - The first special condition will be applied to individual permits issued within the boundaries of the SRWMD and the portion of the North Florida Regional Water Supply Planning Area within the SJRWMD, and is designed to ensure continuing compliance of the water use with the ongoing efforts of the Recovery Strategy. This condition allows for future modification of the permit to address impacts to the MFL water bodies, and provides an important means for adaptive management by the issuing WMD in light of new technical tools, future hydrologic conditions, and the development of long-term recovery strategies to be developed in the context of the North Florida Regional Water Supply Plan.[27]
        - The second special condition will only be applied to individual water use permits for agricultural use located within Columbia, Suwannee, Union, and Gilchrist Counties, and the portions of Baker, Bradford, and Alachua Counties within the boundaries of the SRWMD. This special condition requires that the permittee participate in a Mobile Irrigation Lab (MIL) program and allow access to the Project Site for the purpose of conducting an MIL evaluation at least once every five years. This condition will provide the WMD with critical information about agricultural water use efficiency to direct future water conservation measures and agricultural cost-share programs.

Analysis of future water use projections and permit records indicates approximately 308 current water use permit holders in the SRWMD and affected area of SJRWMD will renew their permits in the next five years, including 49 non-agricultural users and 259 agricultural users. The assessment conducted indicated that it is unlikely that current non-agricultural water users will request increased water allocations that will be affected by the proposed rule in the next five years. Of the 259 agricultural water use permit holders likely to renew in this area in the next five years, approximately 28 would be expected to request new quantities likely to impact the MFLs, and would be required to offset or reduce their impacts to the MFL water bodies. The projected increase in water use that would require offsets of impacts among renewing existing permit holders is approximately 2.6 MGD. [28]

In addition to the renewal of current permits, assessment of water use projections and existing permit records and water uses indicated that it is unlikely that new non-agricultural permits will be affected by the proposed rule. However, approximately 400 new agricultural permit applications are anticipated over the next five years in the SRWMD. Of these, approximately 40 are projected to impact the MFL water bodies, requiring a total offset of approximately 11.2 MGD in new withdrawals.[29]

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of

[27] The North Florida Regional Water Supply Plan is a collaborative effort between DEP, the SRWMD, the SJRWMD, local governments, and other stakeholders throughout the region to ensure sustainable water supplies and protect north Florida's waterways and natural systems. See the North Florida Regional Water Supply Partnership website, available at http://northfloridawater.com/

[28] Statement of Estimated Regulatory Costs for Rule 62-42.300, F.A.C., Executive Summary. On file with the House Agriculture & Natural Resources Subcommittee.

[29] *Id.*

forms.[30] Rulemaking authority is delegated by the Legislature[31] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[32] a rule. Agencies do not have discretion as to whether to engage in rulemaking.[33] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[34] The grant of rulemaking authority itself need not be detailed.[35] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[36]

An agency begins the formal rulemaking process by filing a notice of the proposed rule.[37] The notice is published by the Department of State in the Florida Administrative Register[38] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[39]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the five-year period after the rule goes into effect. First discussed in the analysis is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[40] Next is the likely adverse impact on business competitiveness,[41] productivity, or innovation.[42] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[43] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the five-year period, the rule cannot go into effect until ratified by the Legislature.[44]

Current law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[45] A rule must be filed for adoption before it may go into effect[46] and cannot be filed for adoption until completion of the rulemaking process.[47] A rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, and must be filed for adoption before being submitted for legislative ratification.

The economic impact of DEP's proposed Rule 62-42.300, F.A.C., for MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Springs is estimated to exceed the economic impact dollar threshold that triggers the legislative ratification requirement. The proposed rule was published in the Florida Administrative Register on March 7, 2014. Pursuant to s. 120.54(3), F.S., a rule must be published in the Florida Administrative Register for at least 28 days before adoption of the proposed rule. A rulemaking hearing is scheduled for April 3, 2014.[48] If no substantive changes to the proposed

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[30] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[31] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[32] Section 120.52(17), F.S.
[33] Section 120.54(1)(a), F.S.
[34] Sections 120.52(8) & 120.536(1), F.S.
[35] *Save the Manatee Club, Inc.,* supra at 599.
[36] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[37] Section 120.54(3)(a)1, F.S.
[38] Section 120.55(1)(b)2, F.S.
[39] Section 120.541(2)(a), F.S.
[40] Section 120.541(2)(a)1., F.S.
[41] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[42] Section 120.541(2)(a) 2., F.S.
[43] Section 120.541(2)(a) 3., F.S.
[44] Section 120.541(3), F.S.
[45] Section 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[46] Section 120.54(3)(e)6, F.S.
[47] Section 120.54(3)(e), F.S.
[48] Section 120.54(3)(c)1., F.S.

rule are required, DEP could file the rule for adoption as early as April 17, 2014.[49] However, if DEP must publish a notice of modification[50] or if a challenge to the proposed rule is filed and must be litigated,[51] the rule may not be available for consideration for ratification before the end of the 2014 Regular Session.

DEP represents there is a critical need to provide protection to the MFLs of these rivers and springs as provided in the proposed rule as soon as possible. If the rule is not available for ratification this year, there may be a significant impact on water quality in the affected areas if DEP must wait a year for the rule to go into effect.

Effect of Proposed Changes

The bill exempts the Department of Environmental Protection's (DEP) proposed Rule 62-42.300, F.A.C., regarding minimum flows and levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers and their associated priority springs, from the legislative ratification requirement in s. 120.541(3), F.S.

The bill also requires DEP to publish, when the rule is adopted, notice of the exemption from ratification. This exemption applies only to the proposed rule and not to future amendments to the rule.

The bill expressly states that it serves no purpose other than exempting the rule from the ratification requirement and that it will not be codified in the Florida Statutes. Furthermore, the bill specifies that it does not:

- Alter rulemaking authority delegated by prior law;
- Constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited; or
- Cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

B. SECTION DIRECTORY:

Section 1. Exempts specified rules from legislative ratification under s. 120.541(3), F.S., and requires DEP to publish the notice.

Section 2. The bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

[49] Section 120.54(3)(e)2., F.S.
[50] Section 120.54(3)(d)1., F.S. An agency must wait at least 21 days after publishing a notice of change before filing a proposed rule for adoption. Section 120.54(3)(e)2., F.S.
[51] Section 120.56(2), F.S. A proposed rule subject to challenge under this statute may not be filed for adoption until after the administrative law judge renders a decision that the proposed rule is not an invalid exercise of delegated authority. Section 120.54(3)(e)2., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

According to the SERC, implementation of the proposed rule being exempted from ratification in the bill will result in a negative fiscal impact of $300,000 on the SRWMD. The proposed rule requires DEP, in coordination with the SRWMD and the SJRWMD, to reevaluate the MFL and the present status of the waterbody and readopt the rule before December 31, 2019. Current statute[52] also requires that MFLs be reevaluated periodically and revised as needed. To the extent that these costs could be considered attributable to the proposed rule, SRWMD would include an analysis by district staff and would likely include contractor assistance and a peer review.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not have a direct fiscal impact on the private sector; however, the substantive policy of the rule being exempted is expected to have an economic impact on the private sector. Those impacts are analyzed in DEP's Statement of Estimated Regulatory Costs (SERC) for the rule.

According to the SERC , based on the SRWMD's analysis of likely water use permit renewals in the SRWMD and the SJRWMD (permits expiring in years 2014 through 2018) and assessment of future new water use projections and recent new water use permit applications, the SRWMD estimates the proposed Rule 62-42.300 is likely to affect some future agricultural water users (approximately 68 over a five-year timeframe) in the Santa Fe Basin because potential adverse impacts to the MFL waterbodies resulting from new and increased water quantity allocations must be offset for 13.8 MGD. If all of the 13.8 MGD were offset by implementing additional agricultural water conservation measures, the cost of providing these offsets would be approximately $3 million over a five-year timeframe (approximately $600,000 per year) for agricultural water users. The existing SRWMD cost-share program typically covers 80 percent of retrofit costs and is expected to substantially reduce the cost to be borne by the agricultural users.

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 grant additional rulemaking authority.

[52] Section 373.0421(3), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

APPENDIX A

Summmary and List of Springs of the Santa Fe and Ichetucknee Rivers
Prepared by the Suwannee River Water Management District
March 2014

Springs of the Santa Fe River		
Spring Name	**County**	**Historic Magnitude**
COL1105041 (COLUMBIA)	COLUMBIA	1
COLUMBIA SPRING	COLUMBIA	1
DEVILS EAR SPRING (GILCHRIST)	GILCHRIST	1
DEVILS EYE SPRING (GILCHRIST)	GILCHRIST	1
HORNSBY SPRING	ALACHUA	1
JULY SPRING	COLUMBIA	1
SANTA FE RIVER RISE (ALACHUA)	ALACHUA	1
SANTA FE SPRING (COLUMBIA)	COLUMBIA	1
SIPHON CREEK RISE	GILCHRIST	1
TREEHOUSE SPRING	ALACHUA	1
ALA930971 (ALACHUA)	ALACHUA	2
ALA930972 (ALACHUA)	ALACHUA	2
ALLEN SPRING	COLUMBIA	2
COL1012972 (COLUMBIA)	COLUMBIA	2
COL101974 (COLUMBIA)	COLUMBIA	2
COL930971 (COLUMBIA)	COLUMBIA	2
DARBY SPRING	ALACHUA	2
DOGWOOD SPRING	GILCHRIST	2
GIL1012971 (GILCHRIST)	GILCHRIST	2
GIL1012974 (GILCHRIST)	GILCHRIST	2
GIL107971 (GILCHRIST)	GILCHRIST	2
GIL107972 (GILCHRIST)	GILCHRIST	2
GIL729971 (GILCHRIST)	GILCHRIST	2
GILCHRIST BLUE SPRING	GILCHRIST	2
GINNIE SPRING	GILCHRIST	2
JOHNSON SPRING	GILCHRIST	2
LILLY SPRING	GILCHRIST	2
MYRTLES FISSURE SPRING	GILCHRIST	2
PICKARD SPRING	GILCHRIST	2
POE SPRING	ALACHUA	2
SUW107971 (SUWANNEE)	SUWANNEE	2
TWIN SPRING	GILCHRIST	2
WILSON SPRING (COLUMBIA)	COLUMBIA	2
BETTY SPRING	SUWANNEE	3
CAMPGROUND SPRING (GILCHRIST)	GILCHRIST	3
COL101971 (COLUMBIA)	COLUMBIA	3

Springs of the Santa Fe River (cont.)

Spring Name	County	Historic Magnitude
COL428981 (COLUMBIA)	COLUMBIA	3
COL917971 (COLUMBIA)	COLUMBIA	3
COL928971 (COLUMBIA)	COLUMBIA	3
DEER SPRING (GILCHRIST)	GILCHRIST	3
GIL1012972 (GILCHRIST)	GILCHRIST	3
GIL928971 (GILCHRIST)	GILCHRIST	3
GIL99972 (GILCHRIST)	GILCHRIST	3
GIL99974 (GILCHRIST)	GILCHRIST	3
JONATHAN SPRING	COLUMBIA	3
LITTLE DEVIL SPRING	GILCHRIST	3
OASIS SPRING	GILCHRIST	3
RUM ISLAND SPRING	COLUMBIA	3
SAWDUST SPRING	COLUMBIA	3
SUNBEAM SPRING	COLUMBIA	3
SUW917971 (SUWANNEE)	SUWANNEE	3
TRAIL SPRING	GILCHRIST	3
TROOP SPRING	GILCHRIST	3
COL101975 (COLUMBIA)	COLUMBIA	4
COL61982 (COLUMBIA)	COLUMBIA	4
GIL729972 (GILCHRIST)	GILCHRIST	4
GIL729973 (GILCHRIST)	GILCHRIST	4
GIL928972 (GILCHRIST)	GILCHRIST	4
GIL99971 (GILCHRIST)	GILCHRIST	4
SUW917972 (SUWANNEE)	GILCHRIST	4
WORTHINGTON SPRING	UNION	4
HOLLY SPRING	GILCHRIST	UNKNOWN
JAMISON SPRINGS	COLUMBIA	UNKNOWN
LITTLE BLUE SPRING (GILCHRIST)	GILCHRIST	UNKNOWN
NAKED SPRING	GILCHRIST	UNKNOWN
POE WOODS SPRING	ALACHUA	UNKNOWN
UNNAMED SPRING (GILCHRIST) 2953480824601	GILCHRIST	UNKNOWN

Springs of the Ichetucknee River		
Spring Name	**County**	**Historic Magnitude**
BLUE HOLE SPRING (COLUMBIA)	COLUMBIA	1
CEDAR HEAD SPRING	COLUMBIA	2
COL1012971 (COLUMBIA)	COLUMBIA	2
DEVILS EYE SPRINGS (SUWANNEE)	SUWANNEE	2
ICHETUCKNEE HEAD SPRING (SUWANNEE)	SUWANNEE	2
MILL POND SPRINGS (COLUMBIA)	COLUMBIA	2
MISSION SPRINGS	COLUMBIA	2
ROARING SPRING	COLUMBIA	2
COFFEE SPRINGS	SUWANNEE	3
GRASSY HOLE SPRING	COLUMBIA	3
SINGING SPRING	COLUMBIA	UNKNOWN

Springs of the Santa Fe and Ichetucknee Rivers by Historic Magnitude			
Spring Magnitude	**Santa Fe River Springs**	**Ichetucknee Springs**	**Total: Santa Fe and Ichetucknee**
1st Magnitude	10	1	11
2nd Magnitude	23	7	30
3rd Magnitude	20	2	22
4th Magnitude	8	0	8
Other/Unknown	6	1	7
Total:	**67**	**11**	**78**

Notes:

1) The above list only includes documented and mapped springs at the time of publication.
2) Several of the springs listed above are part of springs clusters, and are considered part of first magnitude spring groups.
3) Historic magitudes presented were obtained from previous work conducted by SRWMD (Hornsby, D., & Ceryak, R. (1998). Springs of the Suwannee River Basin in Florida) and the Florida Geological Survey (Bulletin No. 66, 2004), as compiled by FDEP in 2011.
4) Collection of springflow data is ongoing and spring magnitudes may be subject to future revision.

1 A bill to be entitled
2 An act relating to ratification of rules of the
3 Department of Environmental Protection; exempting a
4 specified rule relating to minimum flows and levels
5 and recovery and prevention strategies for certain
6 water bodies from ratification under s. 120.541(3),
7 F.S., which requires ratification of any rule meeting
8 any specified thresholds for likely adverse impact or
9 increase in regulatory costs; providing applicability;
10 providing an effective date.
11
12 WHEREAS, on March 7, 2014, the Department of Environmental
13 Protection proposed rules 62-42.100 and 62-42.200, Florida
14 Administrative Code, establishing the scope and definitions for
15 minimum flows and levels adopted by the department, and rule 62-
16 42.300, Florida Administrative Code, establishing minimum flows
17 and levels for the Lower Santa Fe and Ichetucknee Rivers and
18 associated priority springs, and
19 WHEREAS, such rules will implement the public policy
20 established in s. 1, chapter 2013-229, Laws of Florida, and
21 related laws authorizing the department to establish minimum
22 flows and levels for water bodies that affect multiple water
23 management districts, and
24 WHEREAS, after adoption by the department, rule 62-42.300,
25 Florida Administrative Code, requires legislative ratification
26 pursuant to s. 120.541(3), Florida Statutes, and

27 WHEREAS, procedures available under the Administrative
28 Procedure Act may delay adoption of the rule by the department,
29 making the rule unavailable for ratification during the 2014
30 Regular Session, and
31 WHEREAS, it is important for these rules to take effect as
32 soon as possible so that associated flow protection rules can be
33 implemented as soon as possible, and
34 WHEREAS, exempting the proposed rule 62-42.300, Florida
35 Administrative Code, from legislative ratification will allow
36 the rules, if otherwise valid, to become effective before the
37 next opportunity for legislative ratification, NOW, THEREFORE,
38
39 Be It Enacted by the Legislature of the State of Florida:
40
41 Section 1. (1) The rule proposed by the Department of
42 Environmental Protection as rule 62-42.300, Florida
43 Administrative Code, entitled "Minimum Flows and Levels and
44 Recovery and Prevention Strategies," which was published on
45 March 7, 2014, in the Florida Administrative Register, Vol. 40,
46 No. 46, pages 1069-1071, is exempt from ratification under s.
47 120.541(3), Florida Statutes.
48 (2) This act serves no other purpose and shall not be
49 codified in the Florida Statutes. At the time of filing this
50 rule for adoption, or as soon thereafter as practicable, the
51 department shall publish a notice of the enactment of this
52 exemption in the Florida Administrative Register. This act does

53 not alter rulemaking authority delegated by prior law and does
54 not constitute legislative preemption of or exception to any
55 other provision of law governing adoption or enforcement of the
56 rule cited. This act does not cure any rulemaking defect or
57 preempt any challenge based on a lack of authority or a
58 violation of the legal requirements governing the adoption of
59 any rule cited.
60 Section 2. This act shall take effect upon becoming a law.