



Agriculture & Natural Resources Appropriations Subcommittee

March 24, 2015
10:00 AM – Noon
Reed Hall



The Florida House of Representatives
Appropriations Committee
Agriculture & Natural Resources Appropriations Subcommittee

Steve Crisafulli
Speaker

Ben Albritton
Chair

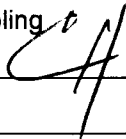

March 24, 2015

AGENDA
10:00 AM – 12:00 PM
Reed Hall

- I. Call to Order/Roll Call
- II. HB 7021—Fish & Wildlife Conservation Commission by Sullivan
- III. CS/HB 841—Contaminated Sites by Drake
- IV. CS/HB 917—Cattle Market Development by Combee, Albritton
- V. Closing/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 841 Contaminated Sites
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Drake
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	9 Y, 0 N, As CS	Gregory	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helping 	Massengale 
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2003, the Legislature created the "Global Risk-Based Corrective Action" or "Global RBCA" statute, requiring risk-based corrective action (RBCA) to be applied to all contaminated sites in Florida. RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds. RBCA utilizes site-specific data, modeling results, risk assessment studies, institutional controls (i.e., deed restrictions limiting future use to industrial), engineering controls (such as placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof. The goal of RBCA in Florida is to provide for a flexible site-specific cleanup process that reflects the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment. Persons Responsible for Site Rehabilitation must follow the Department of Environmental Protection's (DEP's) RBCA procedure when rehabilitating a contaminated site.

This bill amends the Global RBCA statute to:

- Add a definition of "background concentration" to include concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. Currently, DEP may not require site rehabilitation to achieve a contamination target level (CTL) for any contaminant more stringent than the naturally occurring background contamination. Under this change, responsible parties would not be required to achieve a CTL for any contaminant more stringent than any background contamination naturally occurring or resulting from the anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation;
- Require DEP's Global RBCA rule to include protocols for long-term natural attenuation for site rehabilitation;
- Require DEP to consider the interactive effects of contaminants, including additives, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task;
- Create an exception when applying state water quality standards for determining what constitutes a rehabilitation program task;
- Allow the use of risk assessment modeling and probabilistic risk assessment to create site-specific alternative cleanup target levels (CTLs); and
- Allow the use of alternative CTLs without institutional controls if certain conditions exist.

The bill appears to have an insignificant negative fiscal impact on the state, which can be absorbed within existing resources; an indeterminate positive fiscal impact on the private sector; and no fiscal impact on local governments. See Fiscal Analysis & Economic Impact Statement for more detail.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Global RBCA

Prior to 2003, Florida used Risk Based Corrective Action (RBCA) at contaminated sites under the following Department of Environmental Protection (DEP) programs: the Petroleum Restoration Program, the Brownfield Program, and the Drycleaning Facility Restoration Program (collectively "program sites").¹ The program sites made up approximately 90 percent of all of the contaminated sites in Florida.²

RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds.³ RBCA utilizes site-specific data, modeling results, risk assessment studies, institutional controls (such as deed restrictions limiting future use to industrial), engineering controls (such as placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof.⁴

DEP managed non-program sites under the Contamination Assessment Plan/Remedial Action Plan process (CAP/RAP) set forth in the Model Corrective Action for Contaminated Site Cases guidance document.⁵ These sites were required to be remediated to default cleanup target levels (CTLs).⁶ A CTL is the concentration of a contaminant identified by an applicable analytical test method, in the medium of concern (e.g., soil or water), at which a site rehabilitation program is deemed complete.⁷ DEP developed the CTLs based on human health and aesthetic factors.⁸ Aesthetic considerations include altered taste, odor, or color of the water.⁹ This approach offered little flexibility to provide site-specific remediation strategies, was inefficient,¹⁰ and created a significant expense.¹¹

In 2003, the Legislature created s. 376.30701, F.S., commonly referred to as "Global Risk-Based Corrective Action" or "Global RBCA," which required RBCA to be applied to all contaminated sites in Florida to meet CTLs.¹² Chapter 62-777, F.A.C., provides the default CTLs and a methodology for RBCA.¹³

¹ Charles F. Mills III, *Global RBCA: Its Implementation, Foundation in Risk-Based Theory, and Implication*, 22 J. Land Use & Envtl. L. 101, 116 (Fall 2006).

² *Id.* at 117.

³ *Id.* at 102 (Fall 2006).

⁴ Ralph A. DeMeo, Michael P. Petrovich, Christopher M. Teal, *Risk-Based Corrective Action In Florida: How Is It Working?*, the Florida Bar Journal, January 2015, at 47.

⁵ Mills, *supra* note 1, at 118. In 2005, the Fifth District Court of Appeals found this guidance document to be an unpromulgated rule, and therefore invalid. *Kerper v. Department of Environmental Protection*, 894 So.2d 1006 (Fla. 5th DCA 2005).

⁶ DeMeo, *supra* note 4, at 47.

⁷ Section 376.301(7), F.S.

⁸ Florida Department of Environmental Protection, *Technical Report: Development of Cleanup Target Levels (CTLs) For Chapter 62-777, F.A.C.*, at 7, incorporated by reference in Rule 62-777.100, F.A.C.

⁹ *Id.*

¹⁰ DeMeo, *supra* note 4, at 47.

¹¹ Mills, *supra* note 1, at 133.

¹² *Id.* at 102.

¹³ *Id.* at 118.

In 2005, DEP adopted rules to implement Global RBCA.¹⁴ The goal was to provide for a flexible site-specific cleanup process that reflected the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment.¹⁵

The ultimate goal for any contaminated site is for DEP to issue it a No Further Action (NFA) order. Upon discovery of a contaminant, DEP must be notified.¹⁶ The Person Responsible for Site Rehabilitation (responsible party) must commence site assessment within 60 days of discovery of a discharge to determine the extent of contamination and facilitate selection of an appropriate remediation strategy.¹⁷ This includes establishing any background concentrations of contaminations.¹⁸ "Background concentrations" are concentrations of contaminants that are naturally occurring in the groundwater, surface water, soil, or sediment in the vicinity of the site.¹⁹ DEP cannot require site rehabilitation to achieve a CTL for any contaminant more stringent than the naturally occurring background contamination.²⁰

Once a responsible party completes a site assessment, it has several Risk Management Options (RMOs) to achieve NFA. Under the RMO options, the responsible party must either rehabilitate the site to the default CTLs established in chapter 62-777, F.A.C., or to the alternative CTLs established through a Risk Assessment. For alternative CTLs, future site use and exposure characteristics differ greatly from those utilized to calculate the default CTLs such that the default CTLs "do not accurately correspond to the risk goals for that site."²¹

Under RMO I, DEP will issue a NFA order without institutional controls or without institutional and engineering controls if the Exposure Point Concentration (EPC) for all detected chemicals do not exceed the less stringent of their corresponding default residential CTLs or their background concentration.²² Under RMO II, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed default commercial/industrial CTLs or alternative CTLs adjusted for site-specific geologic or hydrogeologic conditions.²³ Under RMO III, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed alternative CTLs adjusted for site-specific exposure scenarios determined in the exposure assessment.²⁴

Several methods may be used to achieve site rehabilitation. Section 376.30701(2), F.S., requires DEP's rule to include protocols for natural attenuation as a method for site rehabilitation. Natural attenuation allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil.²⁵ Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.²⁶ This practice may be used depending on individual site characteristics, current and projected use of the land and groundwater, the exposed population, the location of the contamination plume, the degree and extent of contamination, the rate of migration of the plume, the apparent or potential rate of degradation of contaminants through natural attenuation, and the potential

¹⁴ DeMeo, *supra* note 4, at 47.

¹⁵ *Id.*

¹⁶ Rule 62-780.210, F.A.C.

¹⁷ Rule 62-780.600, F.A.C.

¹⁸ Rule 62-780.600(3)(d), F.A.C.

¹⁹ Rule 62-780.200(3), F.A.C.

²⁰ Section 376.30701(2)(g)1., F.S.

²¹ Florida Department of Environmental Protection, *Technical Report: Development of Cleanup Target Levels (CTLs) For Chapter 62-777, F.A.C.*, at 43-44, incorporated by reference in Rule 62-777.100, F.A.C.

²² Mills, *supra* note 1, at 125; Rule 62-780.680(1), F.A.C.

²³ *Id.*; Rule 62-780.680(2), F.A.C.

²⁴ *Id.*; Rule 62-780.680(3), F.A.C.

²⁵ Section 376.301(24), F.S.

²⁶ *Id.*

for further migration in relation to the site's property boundary.²⁷ DEP may approve natural attenuation if:

- Free product is not present or free product removal is not feasible;
- Contaminated soil is not present in the unsaturated zone;
- Contaminations present in the groundwater above background concentrations or applicable CTLs are not migrating beyond the temporary point of compliance or vertically;
- The characteristics of the contaminant and its transformation products are conducive to natural attenuation; and
- One of the following is met:
 - The contaminated site is anticipated to meet NFA criteria in 5 years or less as a result of natural attenuation, the background concentrations or applicable CTLs are not exceeded at the temporary point of compliance, and contaminant concentrations do not meet certain criteria; or
 - The appropriateness of natural attenuation is demonstrated by:
 - A technical evaluation of the groundwater and soil; and
 - A scientific evaluation of the contamination plume migration, an estimate of the annual reduction in contaminant concentrations, and the estimated time to meet NFA.²⁸

Contaminated Site Liability

Under s. 376.308(1)(a), F.S., DEP may hold a person liable for any discharge or polluting condition if the person caused the discharge or polluting condition or owned the facility at the time the discharge occurred. Under ss. 376.308(1)(b) and 403.707(4), F.S., the following persons can be held liable for all costs of removal or remedial action incurred by DEP and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance:

- Owners and operators of a facility;
- Persons who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;
- Any person who by contract arranged for the disposal of a hazardous substance; and
- Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites.

DEP does not need to plead or prove negligence in any form or matter in these cases.²⁹ DEP must only plead and prove that the prohibited discharge or other polluting condition occurred.³⁰ Thus, this is a strict liability statute.

Persons potentially liable for a discharge, polluting condition, or release may only use the defenses set forth in the statutes.³¹ To avoid liability persons must plead and prove the occurrence was solely the result of:

- An act of war;
- An act of government;
- An act of God; or
- An act or omission of a third party.³²

While the first three defenses are straight forward to plead and prove, the third party defense may only be used when the defendant proves by a preponderance of the evidence that:

²⁷ Rule 62-780.690(1), F.A.C.

²⁸ Rule 62-780.690(1), F.A.C.

²⁹ Section 376.308(1), F.S.

³⁰ Id.

³¹ Id.; Section 403.727(4), F.S.

³² Sections 376.308(2) and 403.727(5), F.S.

- The defendant exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such biomedical or hazardous waste, in light of all relevant facts and circumstances; and
- The defendant took precautions against foreseeable acts or omissions of any such third party and against the consequences that could foreseeably result from such acts or omissions.

These requirements are imposed on owners of contaminated sites because they are in the best position to protect themselves from the indemnities of the seller through pre-purchase due diligence and negotiation.³³

In addition to these defenses, in the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility may escape liability by demonstrating that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title.³⁴ Under this “innocent landowner defense,” the defendant must prove by a preponderance of the evidence that that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability.³⁵ When considering whether to apply the innocent landowner defense, a judge must take into account:

- Any specialized knowledge or experience on the part of the defendant;
- The relationship of the purchase price to the value of the property if uncontaminated;
- Commonly known or reasonably ascertainable information about the property;
- The obviousness of the presence or likely presence of contamination at the property; and
- The ability to detect such contamination by appropriate inspection.³⁶

Effect of Proposed Changes

This bill makes several revisions to the Global Risk-Based Corrective Action statutes.

The bill amends s. 376.301, F.S., to add a definition of “background concentration.” This definition includes concentrations of contaminants that are naturally occurring **or the result of anthropogenic (human) impacts** unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. The bill also makes corresponding changes in ss. 376.30701(2)(g)1. and 376.30701(2)(i)1., F.S., to remove references to “naturally occurring” in front of “background concentration.”

Currently, these provisions prohibit DEP from requiring site rehabilitation to achieve a CTL for any contaminant more stringent than the background contamination. As discussed above, the rule only includes naturally occurring concentrations of contaminants in its definition of “background concentration.” Under the proposed change, human-created contamination may be treated as background contamination as well as naturally occurring contaminants. The change is similar to the EPA’s policy for addressing background concentrations. In certain situations, the EPA will not require rehabilitation below naturally occurring or anthropogenic background concentrations.³⁷ The EPA guidance requires that the anthropogenic background contamination be unrelated to the release of hazardous substances at the contaminated site.³⁸ Under the proposed change, responsible parties

³³ Aramark Uniform and Career Apparel, Inc., et al. vs. Easton, 894 So. 2d 20, 25 (Fla. 2004)

³⁴ Section 376.308(1)(c), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Environmental Protection Agency, *Transmittal of Policy Statement: “Role of Background in CERCLA Cleanup Program” OSWER 9285.6-07P* (May 2002), available at <http://www.epa.gov/oswer/riskassessment/pdf/role.pdf> (last visited March 2, 2015); Environmental Protection Agency, *Guidance for Comparing Background and Chemical Concentrations in Soil for CERCLA Sites OSWER 9285.7-41* (September 2002), available at <http://www.epa.gov/oswer/riskassessment/pdf/background.pdf> (last visited March 2, 2015).

³⁸ *Id.*

would only be required to rehabilitate their contaminated sites for the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation.

The bill also amends s. 376.30701(2), F.S., to require DEP's Global RBCA rules to include protocols for long-term natural attenuation. The bill also makes a corresponding change to s. 376.301, F.S., to add a definition of "long-term natural attenuation" to mean natural attenuation approved by DEP as a site rehabilitation program task that lasts more than five years. As discussed above, Rule 62-780.690, F.A.C., limits natural attenuation to a five-year period. However, natural attenuation may be permitted if the appropriateness of natural attenuation is demonstrated through technical and scientific evaluation. Thus, this change would appear to be consistent with the rule.

The bill amends s. 376.30701(2)(e), F.S., to require DEP to consider the interactive effects of contaminants, including additive, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task. Rule 62-780.650(1)(c)3., F.A.C., allows this methodology when creating a risk characterization as part of a risk assessment. Thus, this change would appear to be consistent with the rule.

The bill amends s. 376.30701(2)(g)2., F.S., to create an exception when applying state water quality standards in determining what constitutes a rehabilitation program task. Currently, the statute requires that when surface waters are exposed to contaminated groundwater, the more protective groundwater or surface water standard CTL must be applied. The bill waives this requirement when it has been demonstrated that contaminants do not cause or contribute to the exceedance of the applicable surface water criteria.

The bill amends ss. 376.30701(2)(g)3. and 376.30701(2)(i)3., F.S., to allow the use of risk assessment modeling and probabilistic risk assessment (PRA) to create site-specific alternative CTLs. PRA is a risk assessment that yields a probability distribution for risk, generally by assigning a probability distribution to represent variability or uncertainty in one or more inputs to the risk equation.³⁹ This method is different from the point estimate risk assessment for single values because it uses multiple variables.⁴⁰ The EPA uses this new method of risk assessment when evaluating risk at contaminated sites it regulates.⁴¹ Rule 62-780.650(3), F.A.C., allows the use of PRA to perform risk assessment when establishing alternative CTLs. Thus, this change would appear to be consistent with the rule.

The bill also amends s. 376.30701(2)(g)3., F.S., to allow the use of alternative CTLs without institutional controls if:

- The only CTLs exceeded are the groundwater CTLs derived from nuisance, organoleptic,⁴² or aesthetic considerations;
- Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, public safety, and the environment;
- All of the established groundwater CTLs for the contaminated site are met at the property boundary;
- The responsible party demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater CTLs established for the contaminated site;
- The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and

³⁹ Environmental Protection Agency, *Risk Assessment Guidance for Superfund: Volume III – Part A, Process for Conducting Probabilistic Risk Assessment at 1-3* (December 2001) available at <http://www.epa.gov/oswer/riskassessment/rags3adt/> (last visited March 2, 2015).

⁴⁰ *Id.* at 1-7.

⁴¹ *See id.*

⁴² "Organoleptic" is defined as being, affecting, or relating to qualities (as taste, color, odor, and feel) of a substance (as a food or drug) that stimulate the sense organs.

- The property owner does not object to the NFA proposal to DEP or the local pollution control program.

Section 376.81(1)(g)3., F.S., already allows use of this procedure for Brownfield contaminated site. This change may require amendment of Rule 62-780.680, F.A.C.

Lastly, the bill amends s. 287.0595(1)(a), F.S., to update a reference to the new numbering in s. 376.301, F.S.

B. SECTION DIRECTORY:

Section 1. Amending s. 376.301, F.S., relating to definitions used in ss. 376.30-376.317, 376.70, and 376.75, F.S.

Section 2. Amending s. 376.30701, F.S., relating to application of risk-based corrective action principles to contaminated sites.

Section 3. Amending s. 287.0595, F.S., relating to pollution response action contracts.

Section 4. Providing an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appears to have an insignificant negative fiscal impact on DEP because the department will likely need to revise their rules as a result of the statutory changes in the bill. The impact can be absorbed by existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate positive economic impact on persons or entities that must rehabilitate a contaminated site. The amounts and types of contaminants, as well as the underlying geology, vary at each site resulting in a wide range of costs associated with site rehabilitation. However, property owners will no longer be required to rehabilitate a site for background concentrations caused by human activities unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. Further, these property owners will not be required to use institutional controls when an alternative CTL is used for site remediation in certain situations. Therefore, there will likely be a reduced cost associated with site cleanup.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

DEP has sufficient rulemaking authority to amend chapter 62-780, F.A.C., to conform to changes made in the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment revised the bill to amend s. 376.301, F.S., to change the definition of "background contamination" to include concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. This change appears to be consistent with EPA guidance.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee.

27 | added to that section, to read:

28 | 376.301 Definitions of terms used in ss. 376.30-376.317,
29 | 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
30 | 376.75, unless the context clearly requires otherwise, the term:

31 | (4) "Background concentration" means the concentration of
32 | contaminants naturally occurring or resulting from anthropogenic
33 | impacts unrelated to the discharge of pollutants or hazardous
34 | substances at a contaminated site undergoing rehabilitation.

35 | (24) "Long-term natural attenuation" means natural
36 | attenuation approved by the department as a site rehabilitation
37 | program task for a period of more than 5 years.

38 | Section 2. Subsection (2) of section 376.30701, Florida
39 | Statutes, is amended to read:

40 | 376.30701 Application of risk-based corrective action
41 | principles to contaminated sites; applicability; legislative
42 | intent; rulemaking authority; contamination cleanup criteria;
43 | limitations; reopeners.—

44 | (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
45 | the intent of the Legislature to protect the health of all
46 | people under actual circumstances of exposure. By July 1, 2004,
47 | the secretary of the department shall establish criteria by rule
48 | for the purpose of determining, on a site-specific basis, the
49 | rehabilitation program tasks that comprise a site rehabilitation
50 | program, including a voluntary site rehabilitation program, and
51 | the level at which a rehabilitation program task and a site
52 | rehabilitation program may be deemed completed. In establishing

53 | these rules, the department shall apply, to the maximum extent
 54 | feasible, a risk-based corrective action process to achieve
 55 | protection of human health and safety and the environment in a
 56 | cost-effective manner based on the principles set forth in this
 57 | subsection. These rules shall prescribe a phased risk-based
 58 | corrective action process that is iterative and that tailors
 59 | site rehabilitation tasks to site-specific conditions and risks.
 60 | The department and the person responsible for site
 61 | rehabilitation are encouraged to establish decision points at
 62 | which risk management decisions will be made. The department
 63 | shall provide an early decision, when requested, regarding
 64 | applicable exposure factors and a risk management approach based
 65 | on the current and future land use at the site. These rules must
 66 | ~~shall also~~ include protocols for the use of natural attenuation,
 67 | including long-term natural attenuation where site conditions
 68 | warrant, the use of institutional and engineering controls, and
 69 | the issuance of "No Further Action" orders. The criteria for
 70 | determining what constitutes a rehabilitation program task or
 71 | completion of a site rehabilitation program task or site
 72 | rehabilitation program, including a voluntary site
 73 | rehabilitation program, must:

74 | (a) Consider the current exposure and potential risk of
 75 | exposure to humans and the environment, including multiple
 76 | pathways of exposure. The physical, chemical, and biological
 77 | characteristics of each contaminant must be considered in order
 78 | to determine the feasibility of a risk-based corrective action

79 | assessment.

80 | (b) Establish the point of compliance at the source of the

81 | contamination. However, the department is authorized to

82 | temporarily move the point of compliance to the boundary of the

83 | property, or to the edge of the plume when the plume is within

84 | the property boundary, while cleanup, including cleanup through

85 | natural attenuation processes in conjunction with appropriate

86 | monitoring, is proceeding. The department may ~~also is~~

87 | ~~authorized~~, pursuant to criteria provided in this section, ~~to~~

88 | temporarily extend the point of compliance beyond the property

89 | boundary with appropriate monitoring, if such extension is

90 | needed to facilitate natural attenuation or to address the

91 | current conditions of the plume, provided human health, public

92 | safety, and the environment are protected. When temporarily

93 | extending the point of compliance beyond the property boundary,

94 | it cannot be extended further than the lateral extent of the

95 | plume, if known, at the time of execution of a cleanup

96 | agreement, if required, or the lateral extent of the plume as

97 | defined at the time of site assessment. Temporary extension of

98 | the point of compliance beyond the property boundary, as

99 | provided in this paragraph, must include actual notice by the

100 | person responsible for site rehabilitation to local governments

101 | and the owners of any property into which the point of

102 | compliance is allowed to extend and constructive notice to

103 | residents and business tenants of the property into which the

104 | point of compliance is allowed to extend. Persons receiving

105 notice pursuant to this paragraph shall have the opportunity to
 106 comment within 30 days after receipt of the notice. Additional
 107 notice concerning the status of natural attenuation processes
 108 shall be similarly provided to persons receiving notice pursuant
 109 to this paragraph every 5 years.

110 (c) Ensure that the site-specific cleanup goal is that all
 111 contaminated sites being cleaned up pursuant to this section
 112 ultimately achieve the applicable cleanup target levels provided
 113 in this subsection. In the circumstances provided in this
 114 subsection, and after constructive notice and opportunity to
 115 comment within 30 days after receipt of the notice to local
 116 government, owners of any property into which the point of
 117 compliance is allowed to extend, and residents of any property
 118 into which the point of compliance is allowed to extend, the
 119 department may allow concentrations of contaminants to
 120 temporarily exceed the applicable cleanup target levels while
 121 cleanup, including cleanup through natural attenuation processes
 122 in conjunction with appropriate monitoring, is proceeding, if
 123 human health, public safety, and the environment are protected.

124 (d) Allow the use of institutional or engineering controls
 125 at contaminated sites being cleaned up pursuant to this section,
 126 where appropriate, to eliminate or control the potential
 127 exposure to contaminants of humans or the environment. The use
 128 of controls must be preapproved by the department and only after
 129 constructive notice and opportunity to comment within 30 days
 130 after receipt of notice is provided to local governments, owners

131 of any property into which the point of compliance is allowed to
 132 extend, and residents on any property into which the point of
 133 compliance is allowed to extend. When institutional or
 134 engineering controls are implemented to control exposure, the
 135 removal of the controls must have prior department approval and
 136 must be accompanied by the resumption of active cleanup, or
 137 other approved controls, unless cleanup target levels under this
 138 section have been achieved.

139 (e) Consider the interactive ~~additive~~ effects of
 140 contaminants, including additive, synergistic, and antagonistic
 141 effects. ~~The synergistic and antagonistic effects shall also be~~
 142 ~~considered when the scientific data become available.~~

143 (f) Take into consideration individual site
 144 characteristics, which shall include, but not be limited to, the
 145 current and projected use of the affected groundwater and
 146 surface water in the vicinity of the site, current and projected
 147 land uses of the area affected by the contamination, the exposed
 148 population, the degree and extent of contamination, the rate of
 149 contaminant migration, the apparent or potential rate of
 150 contaminant degradation through natural attenuation processes,
 151 the location of the plume, and the potential for further
 152 migration in relation to site property boundaries.

153 (g) Apply state water quality standards as follows:

154 1. Cleanup target levels for each contaminant found in
 155 groundwater shall be the applicable state water quality
 156 standards. Where such standards do not exist, the cleanup target

157 levels for groundwater shall be based on the minimum criteria
158 specified in department rule. The department shall apply the
159 following, as appropriate, in establishing the applicable
160 cleanup target levels: calculations using a lifetime cancer risk
161 level of 1.0E-6; a hazard index of 1 or less; the best
162 achievable detection limit; and nuisance, organoleptic, and
163 aesthetic considerations. However, the department may not ~~shall~~
164 ~~not~~ require site rehabilitation to achieve a cleanup target
165 level for any individual contaminant that is more stringent than
166 the site-specific, ~~naturally occurring~~ background concentration
167 for that contaminant.

168 2. Where surface waters are exposed to contaminated
169 groundwater, the cleanup target levels for the contaminants must
170 ~~shall~~ be based on the more protective of the groundwater or
171 surface water standards as established by department rule,
172 unless it has been demonstrated that the contaminants do not
173 cause or contribute to the exceedance of applicable surface
174 water quality criteria. In such circumstance, the point of
175 measuring compliance with the surface water standards shall be
176 in the groundwater immediately adjacent to the surface water
177 body.

178 3. Using risk-based corrective action principles, the
179 department shall approve alternative cleanup target levels in
180 conjunction with institutional and engineering controls, if
181 needed, based upon an applicant's demonstration, using site-
182 specific or other relevant data and information, risk assessment

183 modeling results, including results from probabilistic risk
184 assessment modeling, risk assessment studies, risk reduction
185 techniques, or a combination thereof, that human health, public
186 safety, and the environment are protected to the same degree as
187 provided in subparagraphs 1. and 2. Where a state water quality
188 standard is applicable, a deviation may not result in the
189 application of cleanup target levels more stringent than the
190 standard. In determining whether it is appropriate to establish
191 alternative cleanup target levels at a site, the department must
192 consider the effectiveness of source removal, if any, that has
193 been completed at the site and the practical likelihood of the
194 use of low yield or poor quality groundwater, the use of
195 groundwater near marine surface water bodies, the current and
196 projected use of the affected groundwater in the vicinity of the
197 site, or the use of groundwater in the immediate vicinity of the
198 contaminated area, where it has been demonstrated that the
199 groundwater contamination is not migrating away from such
200 localized source, provided human health, public safety, and the
201 environment are protected. Groundwater resource protection
202 remains the ultimate goal of cleanup, particularly in light of
203 the state's continued growth and consequent demands for drinking
204 water resources. The Legislature recognizes the need for a
205 protective yet flexible cleanup approach that risk-based
206 corrective action provides. Only where it is appropriate on a
207 site-specific basis, using the criteria in this paragraph and
208 careful evaluation by the department, shall proposed alternative

209 | cleanup target levels be approved. If alternative cleanup target
 210 | levels are used, institutional controls are not required if:

211 | a. The only cleanup target levels exceeded are the
 212 | groundwater cleanup target levels derived from nuisance,
 213 | organoleptic, or aesthetic considerations;

214 | b. Concentrations of all contaminants meet the state water
 215 | quality standards or the minimum criteria, based on the
 216 | protection of human health, public safety, and the environment,
 217 | as provided in subparagraph 1.;

218 | c. All of the groundwater cleanup target levels
 219 | established pursuant to subparagraph 1. are met at the property
 220 | boundary;

221 | d. The person responsible for site rehabilitation has
 222 | demonstrated that the contaminants will not migrate beyond the
 223 | property boundary at concentrations that exceed the groundwater
 224 | cleanup target levels established pursuant to subparagraph 1.;

225 | e. The property has access to and is using an offsite
 226 | water supply, and an unplugged private well is not used for
 227 | domestic purposes; and

228 | f. The property owner does not object to the "No Further
 229 | Action" proposal to the department or the local pollution
 230 | control program.

231 | (h) Provide for the department to issue a "No Further
 232 | Action" order, with conditions, including, but not limited to,
 233 | the use of institutional or engineering controls where
 234 | appropriate, when alternative cleanup target levels established

235 | pursuant to subparagraph (g)3. have been achieved or when the
 236 | person responsible for site rehabilitation can demonstrate that
 237 | the cleanup target level is unachievable with the use of
 238 | available technologies. Before ~~Prior to~~ issuing such an order,
 239 | the department shall consider the feasibility of an alternative
 240 | site rehabilitation technology at the contaminated site.

241 | (i) Establish appropriate cleanup target levels for soils.
 242 | Although there are existing state water quality standards, there
 243 | are no existing state soil quality standards. The Legislature
 244 | does not intend, through the adoption of this section, to create
 245 | such soil quality standards. The specific rulemaking authority
 246 | granted pursuant to this section merely authorizes the
 247 | department to establish appropriate soil cleanup target levels.
 248 | These soil cleanup target levels shall be applicable at sites
 249 | only after a determination as to legal responsibility for site
 250 | rehabilitation has been made pursuant to other provisions of
 251 | this chapter or chapter 403.

252 | 1. In establishing soil cleanup target levels for human
 253 | exposure to each contaminant found in soils from the land
 254 | surface to 2 feet below land surface, the department shall apply
 255 | the following, as appropriate: calculations using a lifetime
 256 | cancer risk level of 1.0E-6; a hazard index of 1 or less; and
 257 | the best achievable detection limit. However, the department may
 258 | ~~shall~~ not require site rehabilitation to achieve a cleanup
 259 | target level for an individual contaminant that is more
 260 | stringent than the site-specific, ~~naturally occurring~~ background

261 concentration for that contaminant. Institutional controls or
 262 other methods shall be used to prevent human exposure to
 263 contaminated soils more than 2 feet below the land surface. Any
 264 removal of such institutional controls shall require such
 265 contaminated soils to be remediated.

266 2. Leachability-based soil cleanup target levels shall be
 267 based on protection of the groundwater cleanup target levels or
 268 the alternate cleanup target levels for groundwater established
 269 pursuant to this paragraph, as appropriate. Source removal and
 270 other cost-effective alternatives that are technologically
 271 feasible shall be considered in achieving the leachability soil
 272 cleanup target levels established by the department. The
 273 leachability goals are ~~shall~~ not ~~be~~ applicable if the department
 274 determines, based upon individual site characteristics, and in
 275 conjunction with institutional and engineering controls, if
 276 needed, that contaminants will not leach into the groundwater at
 277 levels that pose a threat to human health, public safety, and
 278 the environment.

279 3. Using risk-based corrective action principles, the
 280 department shall approve alternative cleanup target levels in
 281 conjunction with institutional and engineering controls, if
 282 needed, based upon an applicant's demonstration, using site-
 283 specific or other relevant data and information, risk assessment
 284 modeling results, including results from probabilistic risk
 285 assessment modeling, risk assessment studies, risk reduction
 286 techniques, or a combination thereof, that human health, public

287 safety, and the environment are protected to the same degree as
 288 provided in subparagraphs 1. and 2.

289
 290 The department shall require source removal as a risk reduction
 291 measure if warranted and cost-effective. Once source removal at
 292 a site is complete, the department shall reevaluate the site to
 293 determine the degree of active cleanup needed to continue.
 294 Further, the department shall determine if the reevaluated site
 295 qualifies for monitoring only or if no further action is
 296 required to rehabilitate the site. If additional site
 297 rehabilitation is necessary to reach "No Further Action" status,
 298 the department is encouraged to utilize natural attenuation
 299 monitoring, including long-term natural attenuation ~~and~~
 300 monitoring, where site conditions warrant.

301 Section 3. Paragraph (a) of subsection (1) of section
 302 287.0595, Florida Statutes, is amended to read:

303 287.0595 Pollution response action contracts; department
 304 rules.—

305 (1) The Department of Environmental Protection shall
 306 establish, by adopting administrative rules as provided in
 307 chapter 120:

308 (a) Procedures for determining the qualifications of
 309 responsible potential vendors before ~~prior to~~ advertisement for
 310 and receipt of bids, proposals, or replies for pollution
 311 response action contracts, including procedures for the
 312 rejection of unqualified vendors. Response actions are those

CS/HB 841



2015

313 | activities described in s. 376.301(41) ~~s. 376.301(39)~~.

314 | Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Cattle Market Development Act
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Combee and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1220

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

SUMMARY ANALYSIS

In 2004, the Legislature passed SB 1770, which created the Beef Market Development Act (Act) to promote the growth of the cattle industry in the state. The Act also created the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-support organization under the Department of Agriculture and Consumer Services (DACs). In addition, the Act authorized the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below. However, SB 1770 provided that the \$1 assessment established under the Act would not be imposed unless the national beef assessment program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law. The U.S. Supreme Court ruled that the national program was constitutional, and therefore, the \$1 assessment established in the Act has never been implemented.

The bill amends current law to rename the Act to the Cattle Market Development Act, and for purposes of the Act, replace the Florida Beef Council, Inc. (Council), with the Florida Cattle Enhancement Board, Inc. (Board), a direct-support organization for DACs.

The bill:

- Establishes procedures for the Board to administer a state beef assessment program that charges an assessment of up to \$1 on each head of cattle sold in the state if the program is approved by a simple majority vote of the cattle producers. This assessment will be in addition to the \$1 assessment by the national beef program;
- Requires the Board to use the proceeds from the assessment to promote beef and beef products;
- Sets forth criteria to be a Board member;
- Sets forth powers and duties of the Board;
- Directs adoption of bylaws to govern the day-to-day operations of the Board;
- Establishes procedures to hold referenda to approve the assessment, modify the assessment, raise the assessment above \$1, and continue the assessment;
- Establishes procedures to collect the assessment;
- Establishes procedures to refund the assessments on request;
- Authorizes the Board to accept grants and gifts; and
- Authorizes the Board to make payments to organizations for services performed.

The bill appears to have no impact on state or local government, but does have an impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beef Market Development Act

In 2004, the Legislature passed SB 1770, creating the Beef Market Development Act (Act).¹ The Act provides that it is the intent of the Legislature for the Act to:

- Promote the growth of the cattle industry in the state;
- Assure the public an adequate and wholesome food supply;
- Provide for the general economic welfare of producers and consumers of beef and the state; and
- Authorize the beef cattle production and feeding industry of the state with the authority to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for beef and beef products that are produced, processed, or manufactured in this state.²

The Legislature created the Act in response to a ruling by the U.S. Eighth Circuit Court of Appeals, which held that the national beef assessment program is unconstitutional because it violates the First Amendment by compelling individuals to support financially private speech.³ The national beef assessment program charges a \$1 assessment for each head of cattle sold.⁴ Funds from the national beef program are expended on advertising, marketing, education, and research programs all aimed at stimulating beef sales.⁵

Section 2 of SB 1770 (2004) included an effective date which provided that the \$1 assessment established under the Act would not be imposed until the national beef program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law.⁶ The U.S. Supreme Court later held the national beef program to be constitutional because the type of speech of which it compelled financial support was not private speech, but government speech.⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.⁸ Thus, the Florida beef assessment program has never been implemented.

The Florida Beef Council, Inc., (Council) created by the Act did not perform the powers of the Act because the Florida beef assessment program was never implemented. The Council does implement the national beef program.⁹ Under this program, \$.50 of the national beef assessment goes to state programs while \$.50 of the assessment goes to national programs.¹⁰

¹ Section 570.83, F.S.

² Section 570.83(2), F.S.

³ Senate Staff Analysis and Economic Impact Statement, Senate Bill 1770 p. 2 (April 13, 2004); See Livestock Marketing Ass'n v. U.S. Dep't of Agriculture, 335 F.3d 711 (8th Cir. 2003).

⁴ 7 U.S.C. § 2904.

⁵ Id.

⁶ Chapter 2004-65, Laws of Fla.

⁷ Johanns v. Livestock Marketing Ass'n, 544 U.S. 550 (2005).

⁸ Id. at 559.

⁹ Beef Board, *State Beef Councils*, <http://www.beefboard.org/qsbc.asp> (last visited February 25, 2015).

¹⁰ 7 U.S.C. § 2904; Beef Board, *Understanding You Beef Checkoff Program*, p. 5 available at <http://www.beefboard.org/> (last visited February 25, 2015).

If the national beef assessment program is ever repealed, stayed, or enjoined, the Council could implement the Florida beef assessment program, discussed below.

Florida Beef Assessment Program

Florida Beef Council, Inc.

The Act creates the Florida Beef Council, Inc. (Council), a not-for-profit corporation organized to operate as a direct-service organization under the Department of Agriculture and Consumer Services (DACs). In addition, the Act authorizes the Council to impose a \$1 maximum assessment on each head of cattle sold in the state if the imposition of the assessment is approved by referendum as described below.¹¹

The Act defines the following terms used in the Act:

- “Beef” or “beef products” means products of beef intended for human consumption which are derived from any bovine animal, regardless of age, including, but not limited to, veal.
- “Cattle” means animals so designated by federal law, which includes all bovine animals. A cow and nursing calf sold together are considered one unit.
- “Council” means the Florida Beef Council, Inc.
- “Department” means the Department of Agriculture and Consumer Services.
- “Collection agent” means a person who sells, offers for sale, markets, distributes, trades, or processes cattle that have been purchased or acquired from a producer or that are marketed on behalf of a producer and also includes meatpacking firms and their agents which purchase or consign to purchase cattle.
- “Person” means any natural person, partnership, corporation, company, association, society, trust, or other business unit or organization.
- “Producer” means a person that has owned or sold cattle in the previous calendar year or presently owns cattle.¹²

The Act also requires the Council to:

- Establish the amount of the assessment at not more than \$1 per head of cattle;
- Develop, implement, and monitor a collection system for the assessment;
- Coordinate the collection of the assessment with other states;
- Establish refund procedures;
- Conduct referenda on the assessment;
- Plan, implement, and conduct programs of promotion, research, and consumer information or industry information to strengthen the cattle industry in the state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products;
- Use the proceeds of the assessment for funding cattle production and beef research, education, promotion, and consumer and industry information in the state and in the nation;
- Plan and implement a cattle and beef industry feedback program in the state;
- Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states;
- Develop new uses and markets for beef and beef products;
- Develop and improve methods of distributing beef and beef products to the consumer;
- Develop methods of improving the quality of beef and beef products for the benefit of consumers;
- Inform and educate the public concerning the nutritive and economic values of beef and beef products;

¹¹ Section 570.83(4), F.S.

¹² Section 570.83(3), F.S.

- Serve as liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both consumers and industry;
- Buy, sell, mortgage, rent, or improve, in any manner that the Council considers expedient, real property or personal property, or both;
- Publish and distribute information as the board of directors deems appropriate;
- Do all other acts necessary or expedient to achieve the purposes of the Council; and
- Approve an annual plan, budget, and audit.¹³

The Council is prohibited from:

- Participating in a political campaign;
- Using receipts to benefit directors, officers, or other private persons, except that the Council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions to further the purposes of the Act;
- Participating in activities prohibited for not for profit corporations under federal tax law; or
- Pursuing any activities that are not in furtherance of the Council's specific and primary purposes.¹⁴

Governing Board

The Act establishes the Council's governance structure. The Act creates a 13-member board of directors composed of:

- Eight representatives of the Florida Cattlemen's Association, of whom one must represent the Florida Association of Livestock Markets, and one must represent practicing order buyers;
- One representative of the Dairy Farmers, Inc.;
- One representative of Florida CattleWomen, Inc.;
- One representative of the Florida Farm Bureau Federation;
- One representative of an allied-industry; and
- One representative of the Institute of Food and Agricultural Sciences (IFAS).¹⁵

The Commissioner of Agriculture (Commissioner) may appoint an ex-officio, nonvoting member to the board.¹⁶

The term of each member of the board of directors is three years with a limit of two consecutive terms.¹⁷ Members are required to be Florida residents who have been cattle producers for the immediately preceding five years, except for the last three representatives mentioned above.¹⁸ Members can be reimbursed for travel, but are not entitled to a salary.¹⁹ A director may be removed if he or she misses three meetings of the board.²⁰ The statute requires the board to adopt bylaws to establish the Council's officers and to establish duties and responsibilities.²¹

Referenda on Assessments

To determine whether the cattle producers would like to impose an assessment that is funded through mandatory, but refundable, contributions, the Act requires that there be a referendum in which each cattle producer is entitled to one vote by secret ballot.²² The referenda are required to be conducted at

¹³ Section 570.83(4)(b)&(c), F.S.

¹⁴ Section 570.83(4)(d), F.S.

¹⁵ Section 570.83(5)(a), F.S.

¹⁶ Section 570.83(5)(c), F.S.

¹⁷ Section 570.83(5)(b), F.S.

¹⁸ Id.

¹⁹ Id.

²⁰ Section 570.83(5)(d), F.S.

²¹ Section 570.83(5)(c), F.S.

²² Section 570.83(6), F.S.

the extension offices of IFAS or the United States Department of Agriculture. Any issue subject to referendum must be determined by a simple majority of the votes cast.²³ Notice of a referendum is required to be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.²⁴ Additional referenda can be held to authorize the Council to increase the assessment to more than \$1 per head of cattle.²⁵ Referenda cannot be held more often than once every three years.²⁶

Powers and Duties of the Council

The Council is required to establish an office in the state, to receive and disburse funds to be used in implementing the programs, to keep books and records maintained in the ordinary course of business, to prepare reports as required, and to appoint a banking institution to receive the program funds and handle distribution.²⁷

The Council is authorized to conduct or contract for research programs, disseminate information benefiting the consumer and the beef industry, and respond to requests from government bodies concerning beef. It may also sue and be sued as a Council without individual members being liable for acts within the scope of the powers of the Act. The Council may borrow money and maintain emergency reserves in amounts not to exceed 50 percent of the anticipated annual income of the Council. The Council is also authorized to appoint advisory groups, hire and administer a staff of employees, and cooperate with other entities having similar objectives. The Council may send an authorized agent upon the premises of any market agency or agent, or collection agency or agent, to examine the accounts to ensure the payment of assessments due, and perform all other acts to further its objectives not prohibited by law.²⁸

Acceptance of Grants and Gifts

The Council is authorized to receive grants and donations provided that there were no restrictions that it considers to be inconsistent with the objectives of the Florida beef assessment program.²⁹

Payments to Organizations

The Council is authorized to fund other organizations for services rendered through a written agreement consistent with the objectives of the Florida beef assessment program.³⁰

Collection of Moneys at Time of Marketing

The Act provides procedures for the collection and remission of assessments at the time of sale by a collection agent. The Council is required to maintain a separate accounting of all assessments. The Council can cooperate with other beef councils to collect the assessment for cattle from other states sold in Florida or from Florida cattle sold in other states. If a person fails to pay the assessment, the Council can bring a civil action against that person in the circuit court of any county and can add a penalty in the amount of the sum of 10 percent of the assessment owed the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees.³¹

²³ Section 570.83(6)(e), F.S.

²⁴ Section 570.83(6)(b), F.S.

²⁵ Section 570.8396)(c). F.S.

²⁶ Id.

²⁷ Section 570.83(7)(a), F.S.

²⁸ Section 570.83(8)(b), F.S.

²⁹ Section 570.83(8), F.S.

³⁰ Section 570.83(9), F.S.

³¹ Section 570.83(10), F.S.

Refunds

A producer of cattle may obtain a full refund upon request within 45 days after the sale transaction takes place, and any disputes will be settled in the same manner as collection disputes. The Council is required to take action on refund requests within 30 calendar days from the date of receipt of the request.³²

Vote on Continuing the Assessment

A referendum to vote to continue the Act may be held once in a three-year period if the Council receives petitions from at least 1,800 producers or 10 percent of Florida's producers as determined by DACS, whichever is less. Petitioners are required to collect the signatures within a 12-month period. Within 90 days of receiving the petitions, the Council must conduct a referendum to determine whether a majority of the producers voting support the continuation of the Act.³³

Bylaws

The Council is directed to adopt bylaws to carry out the intent and purposes of the Act. The statute also provided procedures for amending the bylaws.³⁴

Repeal

Lastly, the statute provides that it would be repealed on October 1, 2019, if not reviewed and saved by the Legislature.³⁵ The Legislature added this provision in 2014 as part of a comprehensive effort to create new reporting and transparency requirements for each citizen support organization (CSO) and direct support organization (DSO) that aids an executive agency.³⁶

Effect of Proposed Changes

Cattle Market Development Act

This bill amends s. 570.83, F.S., to give effect to the current law by establishing a new Florida beef assessment program and includes various revisions to the Act. The bill:

- Renames the statute the "Cattle Market Development Act;"
- Creates the Florida Cattle Enhancement Board, Inc.; and
- Creates a new Florida beef assessment program that is separate from and in addition to the national beef assessment program.

The bill amends the definition of "cattle" in s. 570.83(3), F.S., to eliminate the provision that treats a cow and a calf sold together as one unit. Thus, under the new Florida beef assessment program, a producer will pay an assessment for both the cow and the calf.

The bill amends s. 570.83(4), F.S., to create the Florida Cattle Enhancement Board (Board), a not-for-profit corporation organized to operate as a direct-service organization under DACS. Activities of the Board are to be financed by an assessment of not more than \$1 on each head of cattle sold in the state. This assessment is in addition to the \$1 assessment for the national beef assessment program. This assessment must be approved by a referendum of cattle producers.

³² Section 570.83(11), F.S.

³³ Section 507.83(12), F.S.

³⁴ Section 507.83(13), F.S.

³⁵ Section 507.83(14), F.S.

³⁶ Senate Bill Analysis and Fiscal Impact Statement, Senate Bill 1194 p. 1 (March 27, 2014).

The bill grants the Board the same powers as the Council by amending ss. 570.83(4) and (7), F.S., to consolidate the duties and powers into subsection (7) and eliminating some duplicative powers. The bill also prohibits the Board from exercising certain powers in the same manner that the Beef Market Development Act prohibited the Council from exercising certain powers. Notably, the bill does not grant the Board the power to sue or be sued. Nor does the bill protect Board directors from personal liability when acting within the scope of powers set forth in the Cattle Market Development Act. This may be because the Board will be a not-for-profit corporation. Not-for-profit corporations may sue or be sued under s. 617.0302(2), F.S. Further, directors of not-for-profit corporations are already afforded liability protection under s. 617.0834, F.S.

Under s. 570.83(5), F.S., the Board will be composed of the same group of representatives as the Council, except the Commissioner will appoint a representative from DACS instead of appointing an ex officio nonvoting member. The initial board of directors will be appointed by the Commissioner for staggered terms of 1 year for three members, 2 years for three members, 3 years for four members, and 4 years for four members. Board directors must meet the same qualifications as Council directors. The Board must create bylaws and will not be compensated except for travel. Similar to the Council, vacancies will be filled as provided in the bylaws, directors will serve 3-year terms, not to exceed two terms, and missing three meetings will be grounds to declare the seat vacant.

The bill amends s. 507.83(6), F.S., to require that the Florida beef assessment be approved by a referendum of cattle producers in the same manner as the Beef Market Development Act. Also like the Beef Market Development Act, the assessment may be increased to be more than \$1 and continued by referendum of the cattle producers. The bill requires the first referendum to be held within 180 days of July 1, 2015, and provides it may not be held more often than once every 3 years. The Commissioner must provide notice of a referendum 90 days in advance. Notice of a referendum must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held. The Commissioner may designate the referendum to take place for at least 5 days, but not more than 10 days. A simple majority vote will determine any issue that requires a referendum.

Under s. 570.83(10), F.S., the assessment collection procedure of the Cattle Market Development Act will be similar to the Beef Market Development Act. The only notable differences are that collection agents must forward the money to the Board by the 15th of each month and collection agents will not be entitled to deduct 2.5 percent of the amount collected to retain as a reasonable collection allowance prior to remitting the funds to the Board.

Under s. 507.83(11), F.S., cattle producers will be entitled to an unconditional refund of the assessment if requested.

Lastly, the bill amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed by October 1, 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature by October 1, 2020.

The Board will be subject to the oversight, reporting, and audit requirements of ss. 20.058 and 215.981, F.S., because it is a direct support organization.

B. SECTION DIRECTORY:

Section 1. Amends s. 570.83, F.S., creating the Cattle Market Development Act.

Section 2. Providing an effective date of July 1, 2015.

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:

The economic impact of the bill on cattle producers is indeterminate. If an assessment is approved by referendum of 1,800 producers or 10 percent, whichever is less, each producer will be assessed \$1 for every head of cattle sold, including both cow and calf. While the bill initially limits the assessment to not more than \$1 per head of cattle sold, the assessment may be raised by referendum. However, a producer is entitled to a full refund on request.

The bill eliminates the 2.5 percent collection allowance to collection agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

As discussed above, the U.S. Supreme Court held that the national beef assessment program did not violate the First Amendment because it compelled financial support of government speech, which is fundamentally different from compelled funding of private speech.³⁷ Compelled funding of government speech is constitutional because, as a general rule, government may support valid programs and policies by taxes or other exactions binding on protesting parties.³⁸ The U.S. Supreme Court found the national beef assessment program was government speech because the U.S. Department of Agriculture (USDA) controlled the message coming from the Beef Board by

³⁷ Johanns, at 559.

³⁸ Id.

having the power to appoint and remove the Beef Board's Operating Committee, specifying what the message may be and the elements of the message, and maintaining final approval authority over the message.³⁹

The bill does not have the same control mechanisms as the national beef assessment program. However, ss. 20.058 and 215.981, F.S., subjects DSOs (like the proposed Florida Cattle Enhancement Board) to governmental oversight and auditing. DSOs must report to their parent agency every year, are subject to modification or termination every year, and must be audited on a regular basis by their parent agency.⁴⁰ Thus, one could argue this oversight is sufficient to demonstrate that the proposed Florida beef assessment program is government speech, and therefore, may be found constitutional.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Amends s. 570.83(13), F.S., to change the provision requiring the Act to be repealed in 2019 if not reviewed and saved by the Legislature to reflect that the bill creates a new DSO and must be reviewed and saved by the Legislature in 2020;
- Corrects a drafting error to change "council" to "board" in s. 570.83(7)(a)11., F.S.; and
- Authorizes the Board to accept grants and gifts and make payments to organizations for services performed.

This analysis is drafted to the bill as amended and passed by the Agriculture & Natural Resources Subcommittee.

³⁹ Id. at 560 – 561.

⁴⁰ Section 20.058 and 215.981, F.S.

27 financial reserve for emergency use, and to appoint
 28 advisory groups; specifying a date by which collection
 29 agents must collect and forward assessments to the
 30 board; removing provisions entitling collection agents
 31 to deduct a fee from the amount of assessments
 32 collected; revising the date of the scheduled repeal
 33 of the act; providing an effective date.

34

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

36

37 Section 1. Section 570.83, Florida Statutes, is amended to
 38 read:

39 570.83 Cattle Beef Market Development Act; definitions;
 40 Florida Cattle Enhancement Board ~~Beef Council~~, Inc., creation,
 41 purposes, governing board, powers, and duties; referendum on
 42 assessments imposed on gross receipts from cattle sales;
 43 payments to organizations for services; collecting and refunding
 44 assessments; vote on continuing the act; board ~~council~~ bylaws.-

45 (1) SHORT TITLE ~~POPULAR NAME~~.—This section ~~act~~ may be
 46 cited as the "Cattle Beef Market Development Act."

47 (2) LEGISLATIVE INTENT.—The Legislature intends by this
 48 act to promote the growth of the cattle industry in this state;
 49 to assure the public an adequate and wholesome food supply; to
 50 provide for the general economic welfare of producers and
 51 consumers of beef and the state; and to provide the ~~beef~~ cattle
 52 ~~production and feeding~~ industry of this state with the authority

53 to establish a self-financed, self-governed program to help
 54 develop, maintain, and expand the state, national, and foreign
 55 markets for beef and beef products that are produced, processed,
 56 or manufactured in this state.

57 (3) DEFINITIONS.—As used in this section ~~act~~, the term:

58 (a) "Beef" or "beef products" means the products of beef
 59 intended for human consumption which are derived from any bovine
 60 animal, regardless of age, including, but not limited to, veal.

61 (b)(e) "Board" or "Florida Cattle Enhancement Board"
 62 ~~"Council"~~ means the Florida Cattle Enhancement Board ~~Beef~~
 63 ~~Council~~, Inc.

64 (c)(b) "Cattle" means such animals as are so designated by
 65 federal law, including any marketing, promotion, and research
 66 orders as are in effect. Unless such federal law provides to the
 67 contrary, the term "cattle" includes all bovine animals,
 68 regardless of age, including, but not limited to, calves. ~~A cow~~
 69 ~~and nursing calf sold together are considered one unit.~~

70 (d)(e) "Collection agent" means a person who sells, offers
 71 for sale, markets, distributes, trades, or processes cattle that
 72 have been purchased or acquired from a producer or that are
 73 marketed on behalf of a producer. The term also includes
 74 meatpacking firms and their agents that purchase or consign to
 75 purchase cattle.

76 (e)(d) "Department" means the Department of Agriculture
 77 and Consumer Services.

78 (f) "Person" means any natural person, partnership,

79 corporation, company, association, society, trust, or other
80 business unit or organization.

81 (g) "Producer" means a person that has owned or sold
82 cattle in the previous calendar year or presently owns cattle.

83 (4) FLORIDA CATTLE ENHANCEMENT BOARD ~~BEEF COUNCIL~~, INC.;
84 CREATION; PURPOSES.—

85 (a) There is created the Florida Cattle Enhancement Board
86 ~~Beef Council~~, Inc., a not-for-profit corporation organized under
87 the laws of this state for the purpose of ~~and~~ operating as a
88 direct-support organization to ~~of~~ the department pursuant to
89 this section.

90 (b) The board may ~~council is authorized to~~ impose an
91 initial assessment, in addition to any other assessment provided
92 by law, of not more than \$1 on each head of cattle sold in the
93 state if the imposition of the assessment is approved by
94 referendum pursuant to subsection (6). The proceeds of the
95 assessment shall be used to fund the activities of the board
96 ~~council. The council shall:~~

97 ~~1. Establish the amount of the assessment at not more than~~
98 ~~\$1 per head of cattle.~~

99 ~~2. Develop, implement, and monitor a collection system for~~
100 ~~the assessment.~~

101 ~~3. Coordinate the collection of the assessment with other~~
102 ~~states.~~

103 ~~4. Establish refund procedures.~~

104 ~~5. Conduct referenda under subsections (6) and (12).~~

- 105 ~~(c) The council shall:~~
- 106 ~~1. Plan, implement, and conduct programs of promotion,~~
- 107 ~~research, and consumer information or industry information which~~
- 108 ~~are designed to strengthen the cattle industry's market position~~
- 109 ~~in this state and in the nation and to maintain and expand~~
- 110 ~~domestic and foreign markets and expand uses for beef and beef~~
- 111 ~~products.~~
- 112 ~~2. Use the proceeds of the assessment for the purpose of~~
- 113 ~~funding cattle production and beef research, education,~~
- 114 ~~promotion, and consumer and industry information in this state~~
- 115 ~~and in the nation.~~
- 116 ~~3. Plan and implement a cattle and beef industry feedback~~
- 117 ~~program in this state.~~
- 118 ~~4. Coordinate research, education, promotion, industry,~~
- 119 ~~and consumer information programs with any national programs or~~
- 120 ~~programs of other states.~~
- 121 ~~5. Develop new uses and markets for beef and beef~~
- 122 ~~products.~~
- 123 ~~6. Develop and improve methods of distributing beef and~~
- 124 ~~beef products to the consumer.~~
- 125 ~~7. Develop methods of improving the quality of beef and~~
- 126 ~~beef products for the benefit of consumers.~~
- 127 ~~8. Inform and educate the public concerning the nutritive~~
- 128 ~~and economic values of beef and beef products.~~
- 129 ~~9. Serve as a liaison within the beef and other food~~
- 130 ~~industries of the state and elsewhere in matters that would~~

131 ~~increase efficiencies that ultimately benefit both consumers and~~
 132 ~~industry.~~

133 ~~10. Buy, sell, mortgage, rent, or improve, in any manner~~
 134 ~~that the council considers expedient, real property or personal~~
 135 ~~property, or both.~~

136 ~~11. Publish and distribute such papers or periodicals as~~
 137 ~~the board of directors considers necessary to encourage and~~
 138 ~~accomplish the purposes of the council.~~

139 ~~12. Do all other acts necessary or expedient for the~~
 140 ~~administration of the affairs and attainment of the purposes of~~
 141 ~~the council.~~

142 ~~13. Approve an annual plan, budget, and audit for the~~
 143 ~~council.~~

144 (c)(d)1. The board council may not participate in or
 145 intervene in any political campaign on behalf of or in
 146 opposition to any candidate for public office. This restriction
 147 includes, but is not limited to, a prohibition against
 148 publishing or distributing any statements.

149 (d)2. ~~No part of~~ The net receipts of the board may not
 150 ~~council shall~~ inure to the benefit of or be distributable to its
 151 directors, its officers, or other private persons, except that
 152 the board council may pay reasonable compensation for services
 153 rendered by staff employees and may make payments and
 154 distributions in furtherance ~~of the purposes~~ of this section
 155 ~~act.~~

156 (e)3. Notwithstanding any other provision of law, the

157 board council may not carry on any other activities prohibited
 158 for not permitted to be carried on:

159 1.a. ~~By~~ A corporation exempt from federal income tax under
 160 s. 501(c)(3) of the Internal Revenue Code of 1986, as amended;
 161 or

162 2.b. ~~By~~ A corporation to which contributions are
 163 deductible under s. 170(c)(2) of the Internal Revenue Code of
 164 1986, as amended.

165 (f)4. Notwithstanding any other statement of the purposes
 166 and responsibilities of the board council, the board council may
 167 not engage in any activities or exercise any powers that are not
 168 in furtherance of its ~~specific and primary~~ purposes.

169 (5) GOVERNING BOARD.—

170 (a) The Florida Cattle Enhancement Board ~~Beef Council~~,
 171 ~~Inc.~~ shall be governed by a board of directors composed of 14
 172 ~~13~~ members as follows:

173 1. ~~Eight, including 8~~ representatives of the Florida
 174 Cattlemen's Association, of whom one is a representative of the
 175 Florida Association of Livestock Markets and one is a practicing
 176 order buyer.†

177 2. One ~~a~~ representative of the Dairy Farmers, Inc.†

178 3. One ~~a~~ representative of the Florida CattleWomen, Inc.†

179 4. One ~~a~~ representative of the Florida Farm Bureau
 180 Federation.†

181 5. One representative of an allied-industry.

182 6. One representative of the department appointed by the

183 Commissioner of Agriculture. ~~representative; and~~

184 7. One representative of the an Institute of Food and
185 Agricultural Sciences ~~representative.~~

186 (b) The initial board of directors shall be appointed by
187 the Commissioner of Agriculture for staggered terms ~~a term~~ of 1
188 year for three members, 2 years for three members, 3 years for
189 four members, and 4 years for four members. Each subsequent
190 vacancy shall be filled in accordance with the bylaws of the
191 Florida Cattle Enhancement Board ~~council~~. Thereafter, each ~~board~~
192 member of the board of directors shall be appointed by the
193 Florida Cattle Enhancement Board to serve a 3-year term and may
194 be reappointed to serve an additional consecutive term. A member
195 may not serve more than two consecutive terms. A member must be
196 a resident of this state and must be a producer who has been a
197 producer for at least the 5 years immediately preceding the
198 first day of his or her service on the board, except that the
199 representative of the Florida Farm Bureau Federation, the
200 allied-industry representative, the department representative,
201 and the Institute of Food and Agricultural Sciences
202 representative need not be producers. All members of the beef
203 ~~council~~ board of directors ~~positions~~ shall serve without
204 compensation but be unsalaried ; however, the board members are
205 entitled to reimbursement as provided in s. 112.061 for travel
206 and other expenses incurred in carrying out ~~the intents and~~
207 ~~purposes of~~ this section act.

208 (c) The Florida Cattle Enhancement Board ~~council~~ shall

209 provide for its officers through its bylaws, including the
 210 ability to set forth offices and responsibilities and form
 211 committees necessary for the implementation of this section ~~aet.~~
 212 ~~The Commissioner of Agriculture may designate an ex officio~~
 213 ~~nonvoting member of the board of directors.~~

214 (d) If a member of the board of directors misses three
 215 consecutive, officially called meetings, the board of directors
 216 may declare that position vacant.

217 (6) REFERENDUM ON ASSESSMENTS.—

218 (a) All producers in this state shall have the opportunity
 219 to vote in a referendum to determine whether the Florida Cattle
 220 Enhancement Board may ~~council shall be authorized to~~ impose an
 221 assessment of not more than \$1 per head on cattle sold in the
 222 state. The referendum shall pose the question: "Do you approve
 223 of a Florida ~~an~~ assessment program, up to \$1 per head of cattle
 224 pursuant to section 570.83, Florida Statutes, to be funded
 225 through specific contributions that are mandatory and refundable
 226 upon request?" The initial referendum under this paragraph shall
 227 take place within 180 days after July 1, 2015. Such referendum
 228 may not be held more often than once every 3 years.

229 (b) Additional referenda may be held to authorize the
 230 board to increase the assessment to more than \$1 per head of
 231 cattle if the board receives petitions from at least 1,800
 232 producers or 10 percent of Florida's producers as determined by
 233 the department, whichever is less, requesting an increase in the
 234 assessment or if the board, by a two-thirds vote of its voting

235 members, approves a motion to increase the assessment. All
 236 petition signatures must be collected within a consecutive 12-
 237 month period. The referendum shall pose the question: "Do you
 238 approve of granting the Florida Cattle Enhancement Board, Inc.,
 239 authority to increase the per-head-of-cattle assessment pursuant
 240 to section 570.83, Florida Statutes, from ...(present rate)...
 241 to up to a maximum of ...(proposed rate)... per head?" Such
 242 referendum may not be held more often than once every 3 years.

243 (c) If the board receives petitions from at least 1,800
 244 producers or 10 percent of Florida's producers as determined by
 245 the department, whichever is less, asking, "Shall the assessment
 246 authorized by the Cattle Market Development Act continue?" the
 247 board shall, within 90 days, conduct a referendum to determine
 248 whether a majority of the producers voting in the referendum
 249 support the continuation of the Cattle Market Development Act.
 250 All petition signatures must be collected within a consecutive
 251 12-month period. Such referendum may not be held more often than
 252 once every 3 years.

253 (d) The Commissioner of Agriculture may initiate a
 254 referendum with a 90-day notice, but not more often that once
 255 every 3 years.

256 (e) ~~(a)~~ A referendum held under this subsection ~~section~~
 257 must be conducted by secret ballot at extension offices of the
 258 Institute of Food and Agricultural Sciences of the University of
 259 Florida or at offices of the United States Department of
 260 Agriculture with the cooperation of the department to ensure

261 fairness in the referendum process.

262 (f) The Commissioner of Agriculture shall designate at
 263 least 5 but not more than 10 consecutive business days for a
 264 referendum to take place.

265 (g) ~~(b)~~ Notice of a referendum ~~to be held under this act~~
 266 must be given at least once in trade publications, the public
 267 press, and statewide newspapers at least 30 days before the
 268 referendum is held.

269 ~~(e) Additional referenda may be held to authorize the~~
 270 ~~council to increase the assessment to more than \$1 per head of~~
 271 ~~cattle. Such referendum shall pose the question: "Do you approve~~
 272 ~~of granting the Florida Beef Council, Inc., authority to~~
 273 ~~increase the per head of cattle assessment pursuant to section~~
 274 ~~570.83, Florida Statutes, from ... (present rate)... to up to a~~
 275 ~~maximum of ... (proposed rate)... per head?" Referenda may not be~~
 276 ~~held more often than once every 3 years.~~

277 (h) ~~(d)~~ Each ~~cattle~~ producer is entitled to only one vote
 278 in a referendum held under this subsection ~~section~~. Proof of
 279 identification and cattle ownership must be presented before
 280 voting.

281 (i) ~~(e)~~ A simple majority of those casting ballots shall
 282 determine any issue that requires a referendum under this
 283 subsection ~~section~~.

284 (7) POWERS AND DUTIES OF THE BOARD ~~COUNCIL~~.-

285 (a) The board ~~council~~ shall:

286 1. Establish the amount of the assessment at not more than

- 287 | \$1 per head of cattle.
- 288 | 2. Develop, implement, and monitor a collection system for
 289 | the assessment.
- 290 | 3. Coordinate the collection of the assessment with other
 291 | states.
- 292 | 4. Establish refund procedures.
- 293 | 5. Conduct referenda under subsection (6).
- 294 | 6. Plan, implement, and conduct programs of promotion,
 295 | research, and consumer information or industry information which
 296 | are designed to strengthen the market position of the cattle
 297 | industry in this state and in the nation and to maintain and
 298 | expand domestic and foreign markets and expand uses for beef and
 299 | beef products.
- 300 | 7. Use the proceeds of the assessment for the purpose of
 301 | funding cattle production and beef research, education,
 302 | promotion, and consumer and industry information in this state
 303 | and in the nation.
- 304 | 8. Plan and implement a cattle and beef industry feedback
 305 | program in this state.
- 306 | 9. Coordinate research, education, promotion, industry,
 307 | and consumer information programs with any national programs or
 308 | programs of other states.
- 309 | 10. Serve as a liaison within the beef and other food
 310 | industries of the state and elsewhere in matters that would
 311 | increase efficiencies that ultimately benefit consumers and
 312 | industry.

313 11. Buy, sell, mortgage, rent, or improve, in any manner
 314 that the board considers expedient, real property or personal
 315 property, or both.

316 12. Publish and distribute such papers or periodicals as
 317 the board of directors considers necessary to encourage and
 318 accomplish the purposes of the Florida Cattle Enhancement Board.

319 ~~13.1. Receive and disburse funds, pursuant to as~~
 320 ~~prescribed elsewhere in this section act,~~ to be used in
 321 administering and implementing this section ~~the act.~~

322 ~~2. Maintain a permanent record of its business~~
 323 ~~proceedings.~~

324 ~~3. Maintain a permanent, detailed record of its financial~~
 325 ~~dealings.~~

326 ~~4. Prepare periodic reports and an annual report of its~~
 327 ~~activities for the fiscal year, for review by the beef industry~~
 328 ~~in this state, and file its annual report with the department.~~

329 14.5. Prepare, for review by the beef industry in this
 330 state, periodic reports and an annual accounting for each fiscal
 331 year of all receipts and expenditures to be filed with the
 332 department, and ~~shall~~ retain a certified public accountant for
 333 this purpose.

334 ~~15.6. Appoint a licensed banking institution to serve as~~
 335 ~~the depository for program funds and to handle disbursements of~~
 336 ~~those funds.~~

337 ~~7. Maintain frequent communication with officers and~~
 338 ~~industry representatives at the state and national levels,~~

339 ~~including the department.~~

340 ~~16.8.~~ Maintain an office in this state.

341 17. Do all other acts necessary permitted by law to
 342 further the intent of this section.

343 (b) The board ~~council~~ may:

344 1. Conduct or contract for scientific research with any
 345 accredited university, college, or similar institution, and
 346 enter into other contracts or agreements that will aid in
 347 carrying out the purposes of the program, including contracts
 348 for the purchase or acquisition of facilities or equipment
 349 necessary to carry out the purposes of the program.

350 2. Disseminate reliable information benefiting the
 351 consumer and the beef industry on subjects such as, but not
 352 limited to, the purchase, identification, care, storage,
 353 handling, cookery, preparation, serving, and nutritive value of
 354 beef and beef products.

355 ~~3. Provide to government bodies, on request, information~~
 356 ~~relating to subjects of concern to the beef industry, and may~~
 357 Act jointly or in cooperation with the state or Federal
 358 Government, and agencies thereof, in the development or
 359 administration of programs that the board ~~council~~ considers to
 360 be consistent with the objectives of the program.

361 ~~4. Sue and be sued as a council without individual~~
 362 ~~liability of the members for acts of the council when acting~~
 363 ~~within the scope of the powers of this act and in the manner~~
 364 ~~prescribed by the laws of this state.~~

365 4.5. Borrow from licensed lending institutions money in
 366 amounts that are not cumulatively greater than 50 percent of the
 367 board's ~~council's~~ anticipated annual income.

368 ~~6. Maintain a financial reserve for emergency use, the~~
 369 ~~total of which must not exceed 50 percent of the council's~~
 370 ~~anticipated annual income.~~

371 ~~7. Appoint advisory groups composed of representatives~~
 372 ~~from organizations, institutions, governments, or businesses~~
 373 ~~related to or interested in the welfare of the beef industry and~~
 374 ~~the consuming public.~~

375 5.8. Employ staff ~~subordinate officers and employees of~~
 376 ~~the council~~, prescribe their duties, and fix their compensation
 377 and terms of employment.

378 6.9. Cooperate with any local, state, regional, or
 379 nationwide organization or agency engaged in work or activities
 380 consistent with the objectives of the program.

381 ~~7.10.~~ Cause any duly authorized agent or representative to
 382 enter upon the premises of any market agency, market agent,
 383 collection agency, or collection agent and examine or cause to
 384 be examined, only by the authorized agent, ~~only~~ books, papers,
 385 and records that deal with the payment of the assessment
 386 provided for in this section ~~act~~ or with the enforcement of this
 387 section ~~act~~.

388 ~~11. Do all other things necessary to further the intent of~~
 389 ~~this act which are not prohibited by law.~~

390 (8) ACCEPTANCE OF GRANTS AND GIFTS.—The board ~~council~~ may

391 accept grants, donations, contributions, or gifts from any
 392 source if the use of such resources is not restricted in any
 393 manner that the board ~~council~~ considers to be inconsistent with
 394 the objectives of the program.

395 (9) PAYMENTS TO ORGANIZATIONS.—

396 (a) The board ~~council~~ may pay funds to other organizations
 397 for work or services performed which are consistent with the
 398 objectives of the program.

399 (b) Before making payments pursuant to ~~described in~~ this
 400 subsection, the board ~~council~~ must secure a written agreement
 401 that the organization receiving payment will:

402 1. Furnish at least annually, or more frequently on
 403 request of the board ~~council~~, written or printed reports of
 404 program activities and reports of financial data that are
 405 relative to the board's ~~council's~~ funding of such activities;
 406 and

407 2. Agree to have appropriate representatives attend
 408 business meetings of the board ~~council~~ as reasonably requested
 409 by the chairperson of the board ~~council~~.

410 (c) The board ~~council~~ may require adequate proof of
 411 security bonding on such ~~said~~ funds to any individual, business,
 412 or other organization.

413 (10) COLLECTION OF MONEYS AT TIME OF MARKETING.—

414 (a) Each collection agent shall ~~may~~ deduct from the gross
 415 receipts of the producer, at the time of sale, the assessment
 416 imposed by the board ~~council~~.

417 (b) The collection agent shall collect all such moneys and
 418 forward them to the board by the 15th day of each ~~council~~
 419 ~~periodically, at least once a month., and~~ The board ~~council~~
 420 shall provide appropriate business forms for the convenience of
 421 the collecting agent in executing this duty.

422 (c) The board ~~council~~ shall maintain within its financial
 423 records a separate accounting of all moneys received under this
 424 section ~~subsection~~.

425 (d) The assessment is due and payable upon the sale of
 426 cattle in this state. The assessment constitutes a personal debt
 427 of the producer who is so assessed or who otherwise owes the
 428 assessment. If a producer fails to remit any properly due
 429 assessment, the board ~~council~~ may bring a civil action against
 430 that person in the circuit court of any county for the
 431 collection thereof, and may add a penalty in the amount of 10
 432 percent of the assessment owed, the cost of enforcing the
 433 collection of the assessment, court costs, and reasonable
 434 attorney ~~attorney's~~ fees. The action shall be tried and judgment
 435 rendered as in any other cause of action for debts due and
 436 payable. All assessments, penalties, and enforcement costs are
 437 due and payable to the board ~~council~~.

438 (e) The board ~~council~~ may adopt reciprocal agreements with
 439 other beef councils or similar organizations relating to moneys
 440 collected by ~~at~~ Florida collection agents on cattle from other
 441 states and to Florida cattle sold at other state markets.

442 ~~(f) The collection agents shall be entitled to deduct 2.5~~

443 ~~percent of the amount collected to retain as a reasonable~~
 444 ~~collection allowance prior to remitting the funds to the~~
 445 ~~council.~~

446 (11) REFUNDS.—

447 (a) A producer who has had moneys deducted from his or her
 448 gross sales receipts under this section ~~act~~ is entitled to a
 449 prompt and full refund on request.

450 (b) The board ~~council~~ shall make available to all
 451 collection agents business forms for requesting refunds
 452 ~~permitting request for refund~~, which forms are to be submitted
 453 by the objecting producer within 45 days after the sale
 454 transaction takes place.

455 (c) A refund claim must include the claimant's signature,
 456 date of sale, place of sale, number of cattle, and amount of
 457 assessment deducted, and must have attached thereto proof of the
 458 assessment deducted.

459 (d) If the board ~~council~~ has reasonable doubt that a
 460 refund claim is valid, it may withhold payment and take such
 461 action as it considers necessary to determine the validity of
 462 the claim. Any dispute arising under this subsection shall be
 463 determined as specified in paragraph (10)(d).

464 (e) The board ~~council~~ shall take action on refund requests
 465 within 30 calendar days following the date of receipt of the
 466 request.

467 (f) Only the producer may initiate a request for refund.

468 ~~(12) VOTE ON CONTINUING THE ASSESSMENT. Upon the delivery~~


469 ~~by certified mail to the Florida Beef Council office of~~
 470 ~~petitions from at least 1,800 producers or 10 percent of~~
 471 ~~Florida's producers as determined by the department, whichever~~
 472 ~~is less, and stating "Shall the assessment authorized by the~~
 473 ~~Beef Market Development Act continue?" the council shall, within~~
 474 ~~90 days, conduct a referendum to determine whether a majority of~~
 475 ~~the producers voting in the referendum support the continuation~~
 476 ~~of the Beef Market Development Act. All signatures must be~~
 477 ~~collected within a 12-month period. A referendum held under this~~
 478 ~~subsection may not be held more than one time in a 3-year~~
 479 ~~period. Qualifications for signature and vote are the same as~~
 480 ~~those required in subsection (6).~~

481 ~~(12)-(13)~~ BYLAWS.—The Florida Cattle Enhancement Board ~~Beef~~
 482 ~~Council~~ shall, within 90 days after the governing board is
 483 appointed ~~this act becomes a law~~, adopt bylaws to carry out the
 484 intents and purposes of this section ~~act~~. The ~~These~~ bylaws may
 485 be amended with a 30-day notice to governing board members at
 486 any regular or special meeting called for such ~~this~~ purpose. The
 487 bylaws must conform to the requirements of this section ~~act~~ but
 488 may also address any matter not in conflict with the general
 489 laws of this state.

490 ~~(13)-(14)~~ REPEAL.—This section is repealed October 1, 2020
 491 ~~2019~~, unless reviewed and saved from repeal by the Legislature.
 492 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 PCB ANRS 15-02 Fish and Wildlife Conservation Commission
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Sullivan
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

In 1998, voters amended the Florida Constitution to create the Florida Fish and Wildlife Conservation Commission (FWC or commission). Generally, FWC has the power to adopt rules regulating wildlife and fresh water aquatic life without a grant of authority from the Legislature. FWC may also adopt rules regulating marine life without a legislative grant of authority, but only to the extent such rulemaking authority was held by the Marine Fisheries Commission on March 1, 1998.

HB 7021 revises various statutes governing fish and wildlife as follows:

Modify Tarpon Tag Requirements

In 2013, FWC modified its rules through its constitutional authority to restrict tarpon to a catch-and-release only fishery unless an angler is pursuing an International Game Fish Association (IGFA) record. In those cases, anglers must first purchase a \$50 tarpon tag to possess the tarpon. The bill eliminates angler reporting requirements for the tarpon tag because FWC may obtain the same information from the IGFA. In addition, the bill modifies the effective and expiration dates of tarpon tags so that each tag is valid for a full calendar year. This change allows anglers to use one tarpon tag during the height of the tarpon fishing season and then renew at the end of the calendar year.

Repeal Restricted Species Endorsement Regulations from Statute

Current law requires a commercial saltwater fisher to obtain a free restricted species (RS) endorsement to commercially harvest and sell the 32 groups of species designated as "restricted" by FWC. In June 2014, the same RS endorsement regulations were adopted into rule by FWC pursuant to its constitutional authority. The bill removes RS endorsement regulations from statute, but does not remove the requirement to obtain a RS endorsement. The removal of the statutory regulations eliminates potential future conflicts between the statutes and FWC rules.

Modify Alligator Statutes

The bill provides certain exemptions from alligator trapping and alligator trapping agent licenses for children under 16 years of age, military and disabled veterans during an FWC-sponsored event, and contracted nuisance alligator trappers. In addition, totally and permanently disabled residents are exempt from paying the fee for an alligator trapping license and trapping agent license. The bill also repeals sections of statutes that have been incorporated into FWC's rules or that are obsolete, and clarifies a funding transfer to the Department of Agriculture and Consumer Services for marketing and education services for alligator products.

Modify Penalties for Violations of Wildlife Feeding Rules

FWC rules prohibit the feeding of bears, alligators/crocodilia, foxes, raccoons, sandhill cranes, pelicans, and bald eagles. The bill modifies statutory penalties for violating those wildlife feeding rules. Under current law, it is a 2nd degree misdemeanor for the first violation of FWC rules governing feeding of fish or wildlife species. However, wildlife officers are generally hesitant to issue a criminal citation to a first time offender for feeding animals illegally, so they usually just issue a warning. The bill reduces the first time offender penalty to a non-criminal infraction with a \$100 mandatory fine, but makes a second violation a 2nd degree misdemeanor, and imposes more serious criminal penalties up to a 3rd degree felony for repeat offenders who feed bears and alligators/crocodilia.

The bill appears to have a fiscal impact on state and local government, and the private sector. See Fiscal Analysis & Economic Impact section below.

The bill is effective upon becoming a law.

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

STORAGE NAME: h7021.ANRAS.DOCX

DATE: 3/13/2015

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1998, voters amended the Florida Constitution to create the Florida Fish and Wildlife Conservation Commission (FWC or commission).¹ The amendment eliminated the Florida Game and Fresh Water Fish Commission and the Marine Fisheries Commission.² The powers of these two agencies were consolidated into FWC.

Article IV, Section 9 of the Florida Constitution provides FWC with the authority to “exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life,” and to “exercise regulatory and executive powers of the state with respect to marine life. . . .” Further, Article IV, Section 9 provides “the legislature may enact laws in aid of the Commission, not inconsistent with this section. . . .” This section of the Constitution must also be read in conjunction with Article XII, Section 23 of the Constitution, which states, “The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law.”

Generally, FWC has the constitutional authority to adopt rules regulating wildlife and fresh water aquatic life without a grant of authority from the Legislature.³ FWC also possesses the constitutional authority to adopt rules related to marine life without a legislative grant of authority, but only to the extent such rulemaking authority was held by the Marine Fisheries Commission on March 1, 1998. It appears that the Marine Fisheries Commission possessed full rulemaking authority over marine life, with the exception of endangered species.⁴ The specific areas under the Marine Fisheries Commission’s authority included:

- Gear Specification; Prohibited Gear; Bag Limits; Size Limits; species that may not be sold; Protected Species; Closed Areas; Quality Control, except for oysters, clams, mussels, and crabs; Seasons; and special considerations relating to egg bearing females;⁵
- Designation of Restricted Species;⁶
- Marine Life Fishing Endorsements;⁷
- Saltwater Fishing Licenses;⁸
- Limiting Tarpon Harvest;⁹
- Crawfish Harvest;¹⁰
- Prohibiting the use of certain fish nets;¹¹
- Traps used to take saltwater products;¹²
- Regulation of Snook;¹³ and
- Spiny Lobster Trap Reduction.¹⁴

¹ Caribbean Conservation Corp., Inc. v. Florida Fish and Wildlife Conservation Com’n, 838 So.2d 492, 494 (Fla. 2003).

² Caribbean Conservation Corp., at 494.

³ Wakulla Commercial Fisherman’s Ass’n, Inc. v. Florida Fish and Wildlife Conservation Com’n, 951 So. 2d 8, 9 (Fla. 1st DCA 2007) (citing Whitehead v. Rogers, 223 So.2d 330 (Fla. 1969)).

⁴ Section 370.027(1), F.S. (1997).

⁵ Id.

⁶ Section 370.01(20), F.S. (1997).

⁷ Section 370.06(2)(d)1. (1997).

⁸ Sections 370.0605(1)(a)&(6)(b) and 370.0615(1) F.S. (1997).

⁹ Section 370.062(1)&(2), F.S. (1997).

¹⁰ Section 370.063, F.S. (1997).

¹¹ Section 370.093, F.S. (1997).

¹² Section 370.1107, F.S. (1997).

¹³ Section 370.1111, F.S. (1997).

Tarpon Tag Requirements

Present Situation

Tarpon are a popular sport fish found throughout Florida's coastal environment. In June 2013, FWC approved a series of changes to the tarpon tag rules.¹⁵ Previously, individuals could harvest two tarpon per day.¹⁶ The rule amendments restricted tarpon to a catch-and-release only fishery.¹⁷ FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.¹⁸ However, tarpon greater than 40 inches in length must remain in the water at all times during temporary possession.¹⁹

Under FWC rules, individuals may harvest tarpon only when in pursuit of an International Game Fish Association (IGFA) record.²⁰ Further, individuals may not possess or harvest a tarpon without first purchasing a tarpon tag and securely attaching the tag through the lower jaw of the tarpon.²¹ Each tarpon tag costs \$50.²² A person may not use more than one tarpon tag during a single license year.²³ Tarpon tags are valid from July 1 through June 30,²⁴ making the expiration fall during the summer, which is the height of tarpon season.

An individual who harvests a tarpon must submit a form to FWC indicating the length, weight, and physical condition of the tarpon when caught; the date and location of where the fish was caught; and any other pertinent information which may be required by the commission.²⁵ FWC may refuse to issue new tags to an individual or guide who fails to provide the required information.

Effect of Proposed Changes

The bill amends s. 379.357, F.S., to eliminate angler reporting requirements found in statute for each harvested tarpon. This requirement is no longer necessary because, under FWC rules, the tarpon fishery is catch-and-release only²⁶ and the FWC states that it can collect the same data from IGFA due to the limited harvest requirement.²⁷ In addition, the bill modifies the effective and expiration dates of tarpon tags so that the tags are valid for an entire calendar year rather than the period from July 1 to June 30. This change allows anglers to use one tarpon tag during the height of the tarpon fishing season and renew the tag at the end of the calendar year. Lastly, the bill removes the requirement for tax collectors to return unused tarpon tags to FWC. This requirement was added to FWC rules.²⁸

The power to enact rules to regulate the number of tarpon that may be harvested was held by the Marine Fisheries Commission on March 1, 1998.²⁹ Thus, it appears FWC does not need statutory authority to limited tarpon harvest.

¹⁴ Section 370.142, F.S. (1997).

¹⁵ 39 Fla. Admin. R. 94 (May 14, 2013).

¹⁶ Rule 68B-32.004, F.A.C. (2005).

¹⁷ Rule 68B-32.001, F.A.C.

¹⁸ Rule 68B-32.004(2), F.A.C.

¹⁹ Rule 68B-32.004(3), F.A.C.

²⁰ Rule 68B-32.009(1)(a), F.A.C.

²¹ Rule 68B-32.009(1)(b), F.A.C.

²² Section 379.361(1), F.S.

²³ Rule 68B-32.009(1)(c), F.A.C.

²⁴ Section 379.357(1), F.S.

²⁵ Section 379.357(3), F.S.

²⁶ Rule 68B-32.001, F.A.C.

²⁷ Florida Fish and Wildlife Conservation Commission, Summary of FWC Proposals for 2015 Session, p. 1 (September 10, 2014).

²⁸ Rule 68B-32.009(5), F.A.C.

²⁹ Section 370.062, F.S. (1997)

Restricted Species Endorsement

Present Situation

Under current law, persons who wish to commercially harvest and sell “restricted species” to a licensed wholesale dealer must possess a restricted species (RS) endorsement.³⁰ “Restricted species” are any species of saltwater products which the state by law, or FWC by rule, has found it necessary to so designate.³¹ The purpose of the RS endorsement is to help ensure the sustainability of the state’s most important commercially harvested species and to ensure that the higher bag limits are being harvested for commercial purposes.³² The RS endorsement may be issued to any person who is at least 16 years old or a firm who certifies that over twenty-five percent or \$5000 of its income, whichever is less, is attributed to the sale of saltwater products pursuant to a saltwater products license.³³ The RS endorsement may be issued to any for-profit corporation who certifies that at least \$5000 of its income is attributed to the sale of saltwater products pursuant to a saltwater products license.³⁴ There is no charge to receive an RS endorsement. Current law also provides the following exceptions from the income requirements:

- An RS endorsement must be available to persons age 62 and older who have been qualified for the RS endorsement for at least 3 of the last 5 years;
- Active military duty time must be excluded from consideration of time necessary to qualify for the RS endorsement;
- A purchaser of a used commercial fishing vessel that possesses or is eligible for an RS endorsement is exempt from the qualifying income requirement for a complete license year after purchase of the vessel;
- Upon the death or permanent disability of a person possessing an RS endorsement, an immediate family member wishing to carry on the fishing operation is exempt from the qualifying income requirement for a complete license year;
- A person age 62 or older who documents that at least \$2,500 of such person’s income is attributable to the sale of saltwater products may be issued an endorsement;
- A permanent RS endorsement may be issued to persons age 70 and older who have held a saltwater products license for at least 3 of the last 5 years;
- Any resident³⁵ who is certified to be totally and permanently disabled is exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 years before the date of the disability;
- An honorably discharged, resident military veteran certified to have a service-connected permanent disability rating of 10 percent or higher is not required to provide documentation for the income requirement with his or her initial application for an RS endorsement; and
- Beginning July 1, 2014, a resident military veteran who applies to the commission within 48 months after receiving an honorable discharge from any branch of the United States Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve is not required to provide documentation for the income requirement with his or her initial application for an RS endorsement.³⁶

³⁰ Section 379.361(2)(b), F.S.

³¹ Section 379.101(32), F.S.; There are currently 32 groups of restricted species. A complete list can be found at: <http://myfwc.com/license/saltwater/commercial-fishing/restricted-species/>. (Florida Fish and Wildlife Conservation Commission, *Commercial Food and Bait Species*, last visited Dec. 5, 2014).

³² 40 Fla. Admin. R. 144 (July 25, 2014).

³³ Section 379.361(2)(b)1., F.S.

³⁴ *Id.*

³⁵ “Resident” is defined for chapter 379, F.S., in section 379.101(30), F.S.

³⁶ Section 379.361(2)(b)5., F.S.

Effect of Proposed Changes

The bill amends s. 379.361, F.S., to remove the RS endorsement requirements from statute. In June 2014, FWC adopted the RS endorsement regulations into Rule 68B-2.006, F.A.C., through its constitutional authority.³⁷ The rule is nearly identical to the statute. FWC adopted the RS endorsement requirements into rule to more timely respond to stakeholder needs or requests for changes.³⁸ The repeal of the statutory language would eliminate potential future conflicts should rule requirements change.³⁹ The requirement to possess an RS endorsement in order to commercially fish such species is retained in the statute. According to FWC, the industry requested that this requirement remain in statute.

The power to enact rules to regulate restricted species was held by the Marine Fisheries Commission on March 1, 1998.⁴⁰ Thus, it appears FWC does not need statutory authority to implement the RS endorsement requirements.

Regulation of Alligator Harvest

Present Situation

Each year, FWC establishes alligator management units and surveys the population of alligators in a given area to establish quotas to provide recreational opportunities for the public to harvest alligators within the alligator management units.⁴¹ Persons wishing to take an alligator or the eggs of an alligator must obtain an alligator trapping permit and license from FWC.⁴² Applicants must first apply for an alligator harvest permit. Applicants for an alligator harvest permit must be 18 years of age and not convicted of any violation of the laws governing alligator or alligator egg harvesting⁴³ or the rule relating to illegally taking of any crocodylian species.⁴⁴ There is no cost to apply for a permit.

Participants in the annual alligator harvest are selected at random to receive permits. Once selected, FWC assigns participants to a specific one-week harvest period during the annual season and a specific location.⁴⁵ In 2014, FWC conducted the annual harvest between August 15th and November 1st.⁴⁶ Harvest permits are only valid for a particular management unit and are not transferable.⁴⁷ Participants who receive a permit must obtain an alligator trapping license by paying a \$250 license fee for Florida residents or a \$1,000 license fee for nonresidents.⁴⁸ Participants are not required to possess a recreational hunting license.

Those who do not receive an alligator trapping license may apply for an alligator trapping agent's license. Such individuals may act as an agent to the individual holding the alligator trapping license.⁴⁹ An alligator trapping agent may only take an alligator in the presence of the alligator trapping permit

³⁷ 40 Fla. Admin. R. 144 (July 25, 2014).

³⁸ Id.

³⁹ Id.

⁴⁰ Section 370.06, F.S. (1997).

⁴¹ Section 379.3013, F.S.; Rule 68A-25.042, F.A.C.

⁴² Section 379.3751(1), F.S.

⁴³ Sections 379.3015 and 379.409, F.S.; while minors under the age of 18 may not obtain an alligator harvest permit, they may obtain an alligator trapping agent's license to assist in the harvest of alligators.

⁴⁴ Section 379.3751(1)(c), F.S.; Rule 68A-25.042(2)(b), F.A.C.

⁴⁵ Rule 68A-25.042(2)(e), F.A.C.; Florida Fish and Wildlife Conservation Commission, 2014 Statewide Alligator Harvest Training and Orientation Manual, p. 11. Available at <http://myfwc.com/wildlifehabitats/managed/alligator/harvest/> (last visited January 29, 2015).

⁴⁶ Id.

⁴⁷ Rule 25.042(2)(e), F.A.C.

⁴⁸ Section 379.3751(2), F.S.

⁴⁹ Section 379.3751(2)(c), F.S.

holder.⁵⁰ Alligator trapping permit holders may use an unlimited number of alligator trapping agents. The fee to receive an alligator trapping agent's license is \$50.⁵¹

The exceptions available for other forms of hunting licenses (minors under 16, disabled veterans in FWC sponsored events and permanently disabled residents) are not available for alligator trapping licenses or alligator trapping agent's licenses.

FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.⁵² After an alligator is killed, the trapper must attach a CITES tag 6 inches from the tip of the alligator's tail.⁵³ The statutes authorize the FWC to assess a fee up to \$30 for each CITES tag issued.⁵⁴ Currently, FWC charges a \$10 or \$30 fee for each CITES tag.⁵⁵ Irrespective of whether a fee is assessed, \$5 per validated hide must be transferred from FWC to the General Inspection Trust Fund.⁵⁶ Further, FWC may assess a fee up to \$5 for each egg collected under an alligator egg collection permit.⁵⁷ Irrespective of whether a fee is assessed, \$1 per egg collected and retained, excluding eggs collected on private wetland management areas, must be transferred from FWC to the General Inspection Trust Fund.⁵⁸ The Department of Agriculture and Consumer Services administers this fund for the purpose of providing marketing and education services with respect to alligator products produced in this state.⁵⁹

Alternatively, land owners may apply to harvest alligators on their land.⁶⁰ FWC issues permits to landowners who meet the criteria in FWC rules.⁶¹ FWC will review data of the alligator population on the lands and recommends a quota for the number of alligators that may be taken.⁶² Upon approval of the harvest quota, FWC issues a harvest permit and CITES tags for each alligator that may be taken in the approved area.⁶³ Individuals must still possess an alligator trapping license or alligator trapping agent's license to hunt on such lands.⁶⁴

FWC also regulates the trade of alligator products by:

- Regulating the marketing and sale of alligators, their eggs, hide, meat, and byproducts, including the development and maintenance of a state sanctioned sale;
- Regulating the handling and processing of alligators, their eggs, hide, meat, and byproducts;
- Regulating commercial alligator farming facilities and operations; and
- Providing hide grading services.⁶⁵

FWC regulations of the trade of alligator products may not supersede the lawful responsibilities of the Department of Agriculture and Consumer Services, the Department of Health, or local governmental entities.⁶⁶

⁵⁰ Rule 68A-25.042(3)(g), F.A.C.

⁵¹ Id.

⁵² Rule 68A-25.042(2)(d), F.A.C.

⁵³ Rule 68A-25.042(3)(h), F.A.C.

⁵⁴ Section 379.3752(2), F.S.

⁵⁵ Rule 68A-25.042(2)(a), F.A.C.; the \$10 charge is for individuals who are paying for an alligator trapping license at the same time as paying for the CITES tag. The \$30 charge is for individuals who already possess a valid alligator trapping license at the time they purchase a CITES tag.

⁵⁶ Section 379.3752(2), F.S.

⁵⁷ Section 379.3751(4), F.S.

⁵⁸ Id.

⁵⁹ Id.; Section 379.3752(2), F.S.

⁶⁰ Rule 68A-25.032(1), F.A.C.

⁶¹ Rule 68A-25.032, F.A.C.

⁶² Rule 68A-25.032(2), F.A.C.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Section 379.3012(1), F.S.

Under s. 379.3016, F.S., it is a first degree misdemeanor for persons to sell alligator products in the form of a stuffed baby alligator or crocodile or to sell alligator products from a species declared endangered by the U.S. Fish and Wildlife Service or FWC. It is also a misdemeanor offense for a person to use the words "alligator" or "gator" when selling a product derived or made from the skin of a crocodile or in connection with the sale of other crocodiles.⁶⁷

Persons who engage in the business of a dealer or buyer of alligator hides must possess a license from FWC.⁶⁸ The annual fee for such license is \$100 for residents⁶⁹ and \$500 for nonresidents.⁷⁰ Every two weeks during open season, dealers and buyers must report to FWC the number and kind of hides bought, the name of the trapper they bought from, and the trapper's license number or exemption.⁷¹

Lastly, FWC regulates the control of nuisance alligators. Individuals with concerns about an alligator may contact FWC's Nuisance Alligator Hotline at 1-866-FWC-GATOR (866-392-4286).⁷² An alligator may be deemed a nuisance if it is at least 4 feet long and the caller believes it poses a threat to people, pets, or property.⁷³ Only individuals under contract with FWC and who possess an alligator trapper license may take, possess, and kill a nuisance alligator.⁷⁴ Individuals may apply for a nuisance alligator contract by submitting a Nuisance Alligator Trapper Application.⁷⁵ FWC issues a CITES tag to the nuisance alligator trapper when an alligator must be removed. Once the nuisance alligator is removed, it becomes the property of the nuisance alligator trapper.⁷⁶

Effect of Proposed Changes

The bill repeals or amends sections of statutes that have been incorporated into FWC's alligator rules or that are obsolete. The bill:

- Deletes subsections (1) and (2) of s. 379.3012, F.S., that granted FWC the power to regulate the trade, marketing, and farming of alligator products, such as hides, eggs, and meat. FWC adopted most of these statutory provisions in rule pursuant to their constitutional authority,⁷⁷ while other portions of the statute are being deleted because they are obsolete. The only portion of s. 379.3012, F.S., that remains is the provision specifying that FWC's powers to implement the Alligator Management Program may not supersede the responsibilities of the Department of Agriculture and Consumer Services, the Department of Health, and local government entities.
- Amends s. 379.364, F.S., to specify the type of alligator hides for which a person must have a license in order to deal in, and remove the requirement for dealers and buyers to report to FWC the number and kind of hides bought as well as the name of the trapper from whom bought and the trapper's license number or exemption.⁷⁸ FWC adopted the requirement for reporting in Rule 68A-24.004(2), F.A.C.
- Amends s. 379.3751, F.S., to:

⁶⁶ Section 379.3012(2), F.S.

⁶⁷ Section 379.3017, F.S.

⁶⁸ Section 379.364(1), F.S.

⁶⁹ Section 379.364(2), F.S.

⁷⁰ Section 379.364(3), F.S.

⁷¹ Section 379.364(4), F.S.

⁷² Florida Fish and Wildlife Conservation Commission, *Statewide Nuisance Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/> (last visited January 29, 2015).

⁷³ Id.

⁷⁴ Rule 68A-25.003(1), F.A.C.

⁷⁵ Rule 68A-25.003(2), F.A.C.

⁷⁶ Id.

⁷⁷ See Rules 68A-25.042 and 68A-25.052, F.A.C.

⁷⁸ Section 379.364(4), F.S.

- Remove from statute FWC's power to limit the number of participants engaged in the taking of alligators or their eggs in the wild. FWC adopted this provision in Rule 68A-25.002(1), F.A.C.
- Remove from statute the requirement to spend one-third of the revenue collected from issuance of the alligator hatching tag for alligator husbandry research. FWC states that it directs this money to the area of research of most need.
- Exempt persons taking alligators who are contracted with FWC to take nuisance alligators from obtaining an alligator trapping license. These individuals will still be required to possess the appropriate alligator related license when taking part in other alligator management activities. Persons assisting contracted nuisance alligator trappers will still be required to possess an alligator trapping agent's license, unless exempt under statute.
- Exempt minors under the age of 16 from obtaining an alligator trapping agent's license.
- Exempt any person taking alligators under a Commission Military/Disabled Veterans Event Permit issued by FWC from obtaining an alligator trapping license or alligator trapping agent license.
- Exempt disabled residents from paying the alligator trapping license and alligator trapping agent license fee, but will still be required to possess an alligator trapping license or alligator trapping agent's license.
- Exempt any person engaged in the taking of alligators under any permit issued by FWC authorizing the take of alligators from possessing a management area permit.
- Specifies that the \$1 per egg fee and \$5 per hide fee for marketing and education services regarding alligator products will be transferred to the Department of Agriculture and Consumer Services when the Legislature appropriates the transfer.
- Amends s. 379.3752, F.S., to:
 - Remove from statute FWC's authority to require CITES tags to be affixed to the hide of any alligator taken from the wild. This requirement is now found throughout Chapter 68A-25, F.A.C.
 - Remove from statute the requirement that the number of CITES tags available for alligators taken pursuant to a collection permit be limited to the number of tags determined by FWC to equal the safe yield of alligators. FWC adopted this provision in Rule 68A-25.042, F.A.C.
 - Provide that funding transfers to the Department of Agriculture and Consumer Services for each alligator hide will be made when appropriated by the Legislature.
- Repeals s. 379.3011, F.S., containing the definitions for "alligator," "alligator hatchling," and "process" or "processing." FWC adopted the definition of "alligator hatchling" in Rule 68A-1.004(4), F.A.C. According to FWC, the remaining definitions are no longer necessary.
- Repeals s. 379.3013, F.S., requiring FWC to study portions of the state that it intends to open to alligator collection permits. FWC adopted this requirement in Rule 68A-25.042, F.A.C.
- Repeals s. 379.3016, F.S., making it a first-degree misdemeanor to sell alligator products in the form of a stuffed baby alligator or other baby crocodile and selling alligator product manufactured from a species that has been declared to be endangered by the United States Fish and Wildlife Service or FWC. These provisions are now found in Rule 68A-25.002(2), F.A.C., and s. 379.401(2) (a) 9, F.S. A first time violation of these prohibitions will be a second degree misdemeanor (as opposed to a first degree misdemeanor) and will escalate based on repeat offenses.
- Repeals s. 379.3017, F.S., which made it a misdemeanor to use the words "alligator" or "gator" in connection with the sale of any product derived or made from the skin of other crocodiles or in connection with the sale of other crocodiles. These prohibitions are now found in Rule 68A-25.002(4), F.A.C., and s. 379.401(2)(a)9., F.S. A first time violation of this prohibition will be a second-degree misdemeanor and will escalate based on repeat offenses.

Alligators are a fresh water aquatic species. Thus, it appears FWC does not require statutory authority to regulate alligator management, except for the power to set license fees and penalties.

Penalties for Violations of Wildlife Feeding Rules

Present Situation

FWC adopted rules to prohibit intentionally feeding bears, foxes, and raccoons;⁷⁹ pelicans;⁸⁰ sandhill cranes;⁸¹ bald eagles;⁸² and alligators and crocodiles.⁸³ FWC designed these rules to protect both species and people. According to FWC, feeding an animal may reduce the animal's natural fear of people, resulting in more frequent contact.⁸⁴ Such behavior may result in nuisance or aggressive behavior. Further, animals fed by humans spend more time in developed areas. This may lead to increased vehicles strikes, sickness from disrupted natural diets and behavior, killing by the public, euthanizing by FWC to protect human safety, and killing by domesticated pets.

Section 379.401(2)(a)4., F.S., makes it a level two violation to violate rules or orders of FWC relating to feeding wildlife, freshwater fish, or saltwater fish (there are currently no rules prohibiting the feeding of freshwater fish). Section 379.401(2)(a)20., F.S., makes it a level two violation to violate rules or orders of FWC relating to feeding or enticing alligators or crocodiles.

The current penalty structure is as follows:

Current Penalties for Violating Wildlife Feeding Rules

Past Violations	Penalties
No convictions within past 3 years	<ul style="list-style-type: none"> 2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)⁸⁵
Convicted of a Level Two violation or higher in the past 3 years	<ul style="list-style-type: none"> 1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail) Minimum fine of \$250⁸⁶
Convicted of 2 Level Two violations or higher in the past 5 years	<ul style="list-style-type: none"> 1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail) Minimum fine of \$500 1 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee⁸⁷
Convicted of 3 Level Two violations or higher in the past 10 years	<ul style="list-style-type: none"> 1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail) Minimum fine of \$750 3 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee⁸⁸

Effect of Proposed Changes

The bill creates s. 379.412, F.S., to revise the penalty structure for violations of the wildlife and freshwater fish feeding rules. The violations of the saltwater fish feeding rules will remain unchanged.

⁷⁹ Rule 68A-4.001(3), F.A.C.

⁸⁰ Rule 68A-4.001(4), F.A.C.

⁸¹ Rule 68A-4.001(5), F.A.C.

⁸² Rule 68A-16.002(1), F.A.C.

⁸³ Rule 68A-25.001, F.A.C.

⁸⁴ Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Wildlife Feeding Rule Penalties, p. 2 (September 10, 2014).

⁸⁵ Section 379.401(2)(b)1., F.S.

⁸⁶ Section 379.401(2)(b)2., F.S.

⁸⁷ Section 379.401(2)(b)3., F.S.

⁸⁸ Section 379.401(2)(b)4., F.S.

The new penalty structure created by the bill is as follows:

Proposed Penalties for Violating Wildlife Feeding Rules		
	Bears, Alligators, and other Crocodilia	All Other Species of Wildlife or Freshwater Fish
1st Offense	Noncriminal Infraction (\$100 fine)	Noncriminal Infraction (\$100 fine)
2nd Offense	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)
3rd Offense	1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)
4th or Subsequent Offense	3rd Degree Felony (up to \$5,000 fine and/or up to five years in prison)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)

The proposed penalties will not apply to rules or orders of FWC relating to:

- Animals held in captivity,
- Restricting the taking or hunting of species over bait or intentionally placed or deposited food; or
- Restricting the taking or hunting of species in proximity to feeding stations.

According to FWC, the changes are designed to deter individuals from feeding wildlife. Between 2007 and 2013, Assistant State Attorneys (ASAs) rejected 28 percent of the citations for violations of the feeding rules while 25 percent of those charged had their adjudication withheld (no criminal misdemeanor finding, but fines are assessed).⁸⁹ Communications with ASAs revealed that some believe that the current criminal penalty for first time offenders is too severe.⁹⁰

FWC believes the new penalty structure will likely result in fewer criminal citations. More severe penalties will be imposed for those who continually violate the law despite receiving education, warnings, and civil penalties. While FWC intends for law enforcement to continue to rely heavily on education before regulation, the revised penalty structure will provide an effective tool in the form of a civil penalty for first time offenders. Once issued a civil penalty, first time offenders should better understand the serious nature of violating the feeding rules. Therefore, these individuals will be less likely to incur criminal violations for future violations.

FWC believes there may be an initial increase in the number of citations issued following the implementation of this proposal. However, the agency believes the number of citations issued will decrease over time as the public becomes aware of the consequences of feeding wildlife.

B. SECTION DIRECTORY:

- Section 1. Amends s. 379.3012, F.S., pertaining to the alligator management and trapping program.
- Section 2. Amends s. 379.357, F.S. pertaining to FWC’s license program for tarpon.
- Section 3. Amends s. 379.361, F.S., pertaining to the RS endorsement.
- Section 4. Amends s. 379.364, F.S., pertaining licenses required for fur and hide dealers.

⁸⁹ Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Wildlife Feeding Rule Penalties, p. 3 (September 10, 2014).

⁹⁰ Id. at 4.

- Section 5. Amends s. 379.3751, F.S., pertaining to the taking and possession of alligators and trapping licenses.
- Section 6. Amends s. 379.3752, F.S., pertaining to the tagging of alligators and hides.
- Section 7. Amends s. 379.401, F.S., pertaining to penalties for violating certain FWC rules or orders.
- Section 8. Creates s. 379.412, F.S., to create new penalties for violations of the wildlife and freshwater fish feeding rules.
- Section 9. Repeals ss. 379.3011, 379.3013, 379.3016, and 379.3017, F.S., pertaining to the alligator trapping program, alligator study requirements, unlawful selling of alligator products, and use of the word "alligator" or "gator."
- Section 10. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have an indeterminate, but likely insignificant, positive fiscal impact on FWC's revenues by increasing certain civil penalties for feeding wildlife.

The bill appears to have an insignificant, negative fiscal impact on FWC's revenues by decreasing the number of people required to obtain an alligator trapping license and an alligator agent's license. FWC estimates that it will sell ninety less resident alligator trapping licenses and one hundred less alligator trapping agent's licenses, resulting in a \$27,500 reduction in revenues for FWC.⁹¹

2. Expenditures:

On March 12, 2015, the Criminal Justice Impact Conference estimated that the new felony created in the bill would have an insignificant negative fiscal impact (increase of 10 or fewer prison beds) on the state.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Fines assessed for conviction of violations of wildlife feeding rules are deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund.⁹² There may be an indeterminate, but likely insignificant, negative fiscal impact on this fund initially because the fine for a first time violation will be reduced from \$500 to \$100.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Alligator Trapping Licenses

Children less than sixteen years old will no longer be required to pay \$50 for the Alligator Trapping Agent's License.

⁹¹ Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Alligator Statutes, p.20 (September 10, 2014).

⁹² Section 142.01, F.S.

Current military and disabled veterans taking alligators as part of a FWC sanctioned event will no longer be required to pay \$250 for the Alligator Trapping License or \$50 for the Alligator Trapping Agent's License.

Disabled residents will no longer be required to pay \$250 for the Alligator Trapping License or \$50 for the Alligator Trapping Agent's License.

Contracted nuisance alligator trappers will no longer be required to pay \$250 for the Alligator Trapping License when trapping nuisance alligators at the request of FWC.

Wildlife Feeding Violations

There may be an indeterminate, but likely positive, fiscal impact on individuals or companies that violate feeding prohibitions initially because the fine for a first time violation will be reduced from \$500 to \$100. Repeat offenders may experience negative fiscal impacts because penalties increase for subsequent violations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

27 | removing provisions requiring alligator hide
 28 | validation tags to be affixed to the hide of any
 29 | alligator taken from the wild; revising provisions
 30 | requiring the commission to transfer certain revenues
 31 | for alligator husbandry research; requiring the
 32 | commission to transfer funds, contingent upon certain
 33 | appropriations, from the alligator management program
 34 | to the General Inspection Trust Fund for the purpose
 35 | of providing marketing and education services
 36 | regarding alligator products produced in this state;
 37 | removing provisions authorizing the commission to
 38 | limit the number of tags available for alligators
 39 | taken pursuant to a collection permit; amending s.
 40 | 379.401, F.S.; conforming provisions to changes made
 41 | by the act; creating s. 379.412, F.S.; providing
 42 | penalties for the feeding of wildlife and freshwater
 43 | fish; providing applicability; defining the term
 44 | "violation"; repealing s. 379.3011, F.S., relating to
 45 | the alligator trapping program; repealing s. 379.3013,
 46 | F.S., relating to alligator study requirements;
 47 | repealing s. 379.3016, F.S., relating to the unlawful
 48 | sale of alligator products; repealing s. 379.3017,
 49 | F.S., relating to products derived or made from the
 50 | skins of other crocodilia; providing an effective
 51 | date.
 52 |

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

54

55 Section 1. Section 379.3012, Florida Statutes, is amended
56 to read:

57 379.3012 Alligator management ~~and trapping~~ program
58 implementation; commission authority.-

59 ~~(1) In any alligator management and trapping program that~~
60 ~~the Fish and Wildlife Conservation Commission shall establish,~~
61 ~~the commission shall have the authority to adopt all rules~~
62 ~~necessary for full and complete implementation of such alligator~~
63 ~~management and trapping program, and, in order to ensure its~~
64 ~~lawful, safe, and efficient operation in accordance therewith,~~
65 ~~may:~~

66 ~~(a) Regulate the marketing and sale of alligators, their~~
67 ~~hides, eggs, meat, and byproducts, including the development and~~
68 ~~maintenance of a state-sanctioned sale.~~

69 ~~(b) Regulate the handling and processing of alligators,~~
70 ~~their eggs, hides, meat, and byproducts, for the lawful, safe,~~
71 ~~and sanitary handling and processing of same.~~

72 ~~(c) Regulate commercial alligator farming facilities and~~
73 ~~operations for the captive propagation and rearing of alligators~~
74 ~~and their eggs.~~

75 ~~(d) Provide hide-grading services by two or more~~
76 ~~individuals pursuant to state-sanctioned sales if rules are~~
77 ~~first promulgated by the commission governing:~~

78 ~~1. All grading-related services to be provided pursuant to~~

79 | ~~this section;~~

80 | ~~2. Criteria for qualifications of persons to serve as~~
 81 | ~~hide graders for grading services to be provided pursuant to~~
 82 | ~~this section; and~~

83 | ~~3. The certification process by which hide graders~~
 84 | ~~providing services pursuant to this section will be certified.~~

85 | ~~(e) Provide sales related services by contract pursuant to~~
 86 | ~~state sanctioned sales if rules governing such services are~~
 87 | ~~first promulgated by the commission.~~

88 | ~~(2) All contractors of the commission for the grading,~~
 89 | ~~marketing, and sale of alligators and their hides, eggs, meat,~~
 90 | ~~and byproducts shall not engage in any act constituting a~~
 91 | ~~conflict of interest under part III of chapter 112.~~

92 | ~~(3) The powers and duties of the commission to implement~~
 93 | ~~the alligator management program do hereunder shall not be~~
 94 | ~~construed so as to supersede the regulatory authority or lawful~~
 95 | ~~responsibility of the Department of Agriculture and Consumer~~
 96 | ~~Services, the Department of Health, or any local governmental~~
 97 | ~~entity regarding the processing or handling of food products,~~
 98 | ~~but are shall be deemed supplemental thereto.~~

99 | Section 2. Subsections (1) and (3) of section 379.357,
 100 | Florida Statutes, are amended to read:

101 | 379.357 Fish and Wildlife Conservation Commission license
 102 | program for tarpon; fees; penalties.—

103 | (1) The commission shall establish a license program for
 104 | the purpose of issuing tags to individuals desiring to harvest

105 | fish of the species *Megalops atlanticus*, commonly known as
 106 | tarpon, ~~(*megalops atlantica*)~~ from the waters of the state. The
 107 | tags shall be nontransferable, except that the commission may
 108 | allow for a limited number of tags to be purchased by
 109 | professional fishing guides for transfer to individuals, and
 110 | issued by the commission in order of receipt of a properly
 111 | completed application for a nonrefundable fee of \$50 per tag.
 112 | The commission and any tax collector may sell the tags and
 113 | collect the fees therefor. Tarpon tags are valid from January
 114 | July 1 through December 31 ~~June 30. Before August 15 of each~~
 115 | ~~year, each tax collector shall submit to the commission all~~
 116 | ~~unissued tags for the previous fiscal year along with a written~~
 117 | ~~audit report, on forms prescribed or approved by the commission,~~
 118 | ~~as to the numbers of the unissued tags.~~ To defray the cost of
 119 | issuing any tag, the issuing tax collector shall collect and
 120 | retain as his or her costs, in addition to the tag fee
 121 | collected, the amount allowed under s. 379.352(6) for the
 122 | issuance of licenses.

123 | (3) An ~~Ne~~ individual may not ~~shall~~ take, kill, or possess
 124 | any fish of the species *Megalops atlanticus* ~~*megalops atlantica*~~,
 125 | commonly known as tarpon, unless the ~~such~~ individual has
 126 | purchased a tarpon tag and securely attached it through the
 127 | lower jaw of the fish. ~~Said individual shall within 5 days after~~
 128 | ~~the landing of the fish submit a form to the commission which~~
 129 | ~~indicates the length, weight, and physical condition of the~~
 130 | ~~tarpon when caught; the date and location of where the fish was~~

131 ~~caught, and any other pertinent information which may be~~
 132 ~~required by the commission. The commission may refuse to issue~~
 133 ~~new tags to individuals or guides who fail to provide the~~
 134 ~~required information.~~

135 Section 3. Paragraph (b) of subsection (2) of section
 136 379.361, Florida Statutes, is amended to read:

137 379.361 Licenses.—

138 (2) SALTWATER PRODUCTS LICENSE.—

139 (b)~~1~~. A restricted species endorsement on the saltwater
 140 products license is required to sell to a licensed wholesale
 141 dealer those species which the state, by law or rule, has
 142 designated as "restricted species." ~~This endorsement may be~~
 143 ~~issued only to a person who is at least 16 years of age, or to a~~
 144 ~~firm certifying that over 25 percent of its income or \$5,000 of~~
 145 ~~its income, whichever is less, is attributable to the sale of~~
 146 ~~saltwater products pursuant to a saltwater products license~~
 147 ~~issued under this paragraph or a similar license from another~~
 148 ~~state. This endorsement may also be issued to a for-profit~~
 149 ~~corporation if it certifies that at least \$5,000 of its income~~
 150 ~~is attributable to the sale of saltwater products pursuant to a~~
 151 ~~saltwater products license issued under this paragraph or a~~
 152 ~~similar license from another state. However, if at least 50~~
 153 ~~percent of the annual income of a person, firm, or for-profit~~
 154 ~~corporation is derived from charter fishing, the person, firm,~~
 155 ~~or for-profit corporation must certify that at least \$2,500 of~~
 156 ~~the income of the person, firm, or corporation is attributable~~

157 ~~to the sale of saltwater products pursuant to a saltwater~~
 158 ~~products license issued under this paragraph or a similar~~
 159 ~~license from another state, in order to be issued the~~
 160 ~~endorsement. Such income attribution must apply to at least 1 of~~
 161 ~~the last 3 years. For the purpose of this section, "income"~~
 162 ~~means that income that is attributable to work, employment,~~
 163 ~~entrepreneurship, pensions, retirement benefits, and social~~
 164 ~~security benefits.~~

165 ~~2. To renew an existing restricted species endorsement, a~~
 166 ~~marine aquaculture producer possessing a valid saltwater~~
 167 ~~products license with a restricted species endorsement may apply~~
 168 ~~income from the sale of marine aquaculture products to licensed~~
 169 ~~wholesale dealers.~~

170 ~~3. The commission may require verification of such income~~
 171 ~~for all restricted species endorsements issued pursuant to this~~
 172 ~~paragraph. Acceptable proof of income earned from the sale of~~
 173 ~~saltwater products shall be:~~

174 ~~a. Copies of trip ticket records generated pursuant to~~
 175 ~~this subsection (marine fisheries information system),~~
 176 ~~documenting qualifying sale of saltwater products;~~

177 ~~b. Copies of sales records from locales other than Florida~~
 178 ~~documenting qualifying sale of saltwater products;~~

179 ~~c. A copy of the applicable federal income tax return,~~
 180 ~~including Form 1099 attachments, verifying income earned from~~
 181 ~~the sale of saltwater products;~~

182 ~~d. Crew share statements verifying income earned from the~~

183 ~~sale of saltwater products; or~~
 184 ~~e. A certified public accountant's notarized statement~~
 185 ~~attesting to qualifying source and amount of income.~~
 186 ~~4. Notwithstanding any other provision of law, any person~~
 187 ~~who owns a retail seafood market or restaurant at a fixed~~
 188 ~~location for at least 3 years, who has had an occupational~~
 189 ~~license for 3 years before January 1, 1990, who harvests~~
 190 ~~saltwater products to supply his or her retail store, and who~~
 191 ~~has had a saltwater products license for 1 of the past 3 license~~
 192 ~~years before January 1, 1990, may provide proof of his or her~~
 193 ~~verification of income and sales value at the person's retail~~
 194 ~~seafood market or restaurant and in his or her saltwater~~
 195 ~~products enterprise by affidavit and shall thereupon be issued a~~
 196 ~~restricted species endorsement.~~
 197 ~~5. Exceptions from income requirements shall be as~~
 198 ~~follows:~~
 199 ~~a. A permanent restricted species endorsement shall be~~
 200 ~~available to those persons age 62 and older who have qualified~~
 201 ~~for such endorsement for at least 3 of the last 5 years.~~
 202 ~~b. Active military duty time shall be excluded from~~
 203 ~~consideration of time necessary to qualify and shall not be~~
 204 ~~counted against the applicant for purposes of qualifying.~~
 205 ~~c. Upon the sale of a used commercial fishing vessel owned~~
 206 ~~by a person, firm, or corporation possessing or eligible for a~~
 207 ~~restricted species endorsement, the purchaser of such vessel~~
 208 ~~shall be exempted from the qualifying income requirement for the~~

209 ~~purpose of obtaining a restricted species endorsement for a~~
 210 ~~complete license year after purchase of the vessel.~~

211 ~~d. Upon the death or permanent disablement of a person~~
 212 ~~possessing a restricted species endorsement, an immediate family~~
 213 ~~member wishing to carry on the fishing operation shall be~~
 214 ~~exempted from the qualifying income requirement for the purpose~~
 215 ~~of obtaining a restricted species endorsement for a complete~~
 216 ~~license year after the death or disablement.~~

217 ~~e. A restricted species endorsement may be issued on an~~
 218 ~~individual saltwater products license to a person age 62 or~~
 219 ~~older who documents that at least \$2,500 of such person's income~~
 220 ~~is attributable to the sale of saltwater products.~~

221 ~~f. A permanent restricted species endorsement may also be~~
 222 ~~issued on an individual saltwater products license to a person~~
 223 ~~age 70 or older who has held a saltwater products license for at~~
 224 ~~least 3 of the last 5 license years.~~

225 ~~g. Any resident who is certified to be totally and~~
 226 ~~permanently disabled by the Railroad Retirement Board, by the~~
 227 ~~United States Department of Veterans Affairs or its predecessor,~~
 228 ~~or by any branch of the United States Armed Forces, or who holds~~
 229 ~~a valid identification card issued by the Department of~~
 230 ~~Veterans' Affairs pursuant to s. 295.17, upon proof of the same,~~
 231 ~~or any resident certified to be disabled by the United States~~
 232 ~~Social Security Administration or a licensed physician, upon~~
 233 ~~proof of the same, shall be exempted from the income~~
 234 ~~requirements if he or she also has held a saltwater products~~

235 | ~~license for at least 3 of the last 5 license years before the~~
 236 | ~~date of the disability. A restricted species endorsement issued~~
 237 | ~~under this paragraph may be issued only on an individual~~
 238 | ~~saltwater products license.~~

239 | ~~h. An honorably discharged, resident military veteran~~
 240 | ~~certified by the United States Department of Veterans Affairs or~~
 241 | ~~its predecessor or by any branch of the United States Armed~~
 242 | ~~Forces to have a service-connected permanent disability rating~~
 243 | ~~of 10 percent or higher, upon providing proof of such disability~~
 244 | ~~rating, is not required to provide documentation for the income~~
 245 | ~~requirement with his or her initial application for a restricted~~
 246 | ~~species endorsement. Documentation for the income requirement is~~
 247 | ~~required beginning with the renewal of the restricted species~~
 248 | ~~endorsement after such veteran has possessed a valid restricted~~
 249 | ~~species endorsement for a complete license year. This exemption~~
 250 | ~~applies only to issuance of the endorsement on an individual~~
 251 | ~~saltwater products license and is a one-time exemption. In order~~
 252 | ~~to renew the restricted species endorsement on an individual~~
 253 | ~~saltwater products license, the veteran must document that at~~
 254 | ~~least \$2,500 of his or her income is attributable to the sale of~~
 255 | ~~saltwater products.~~

256 | ~~i. Beginning July 1, 2014, a resident military veteran who~~
 257 | ~~applies to the commission within 48 months after receiving an~~
 258 | ~~honorable discharge from any branch of the United States Armed~~
 259 | ~~Forces, the United States Coast Guard, the military reserves,~~
 260 | ~~the Florida National Guard, or the United States Coast Guard~~

261 ~~Reserve is not required to provide documentation for the income~~
 262 ~~requirement with his or her initial application for a restricted~~
 263 ~~species endorsement. Documentation for the income requirement is~~
 264 ~~required beginning with the renewal of the restricted species~~
 265 ~~endorsement after such veteran has possessed a valid restricted~~
 266 ~~species endorsement for a complete license year. This exemption~~
 267 ~~applies only to issuance of the endorsement on an individual~~
 268 ~~saltwater products license and may only be applied one time per~~
 269 ~~military enlistment.~~

270 ~~j. Until June 30, 2014, a resident military veteran who~~
 271 ~~applies to the commission and who received an honorable~~
 272 ~~discharge from any branch of the United States Armed Forces, the~~
 273 ~~United States Coast Guard, the military reserves, the Florida~~
 274 ~~National Guard, or the United States Coast Guard Reserve between~~
 275 ~~September 11, 2001, and June 30, 2014, is not required to~~
 276 ~~provide documentation for the income requirement with his or her~~
 277 ~~initial application for a restricted species endorsement.~~
 278 ~~Documentation for the income requirement is required beginning~~
 279 ~~with the renewal of the restricted species endorsement after~~
 280 ~~such veteran has possessed a valid restricted species~~
 281 ~~endorsement for a complete license year. This exemption applies~~
 282 ~~only to issuance of the endorsement on an individual saltwater~~
 283 ~~products license.~~

284 Section 4. Section 379.364, Florida Statutes, is amended
 285 to read:

286 379.364 License required for fur and hide dealers.—

287 (1) ~~A It is unlawful for any person~~ may not ~~to~~ engage in
 288 the business of a dealer or buyer in green or dried alligator
 289 hides ~~skins~~ or green or dried furs in the state or purchase such
 290 hides or furs ~~skins~~ within the state until the ~~such~~ person has
 291 been licensed as ~~herein~~ provided in this section.

292 (2) A person ~~Any resident dealer or buyer~~ who solicits
 293 business through the mail ~~mails~~, or by advertising, or who
 294 travels to buy or employs or has other agents or buyers, shall
 295 be deemed a dealer.

296 (3) A resident ~~state~~ dealer ~~and~~ must pay a license fee of
 297 \$100 per annum.

298 (4) ~~(3)~~ A nonresident dealer ~~or buyer~~ must pay a license
 299 fee of \$500 per annum.

300 ~~(4) All dealers and buyers shall forward to the Fish and~~
 301 ~~Wildlife Conservation Commission each 2 weeks during open season~~
 302 ~~a report showing number and kind of hides bought and name of~~
 303 ~~trapper from whom bought and the trapper's license number, or if~~
 304 ~~trapper is exempt from license under any of the provisions of~~
 305 ~~this chapter, such report shall show the nature of such~~
 306 ~~exemption. A common carrier may not knowingly ship or transport~~
 307 ~~or receive for transportation any hides or furs unless such~~
 308 ~~shipments have marked thereon name of shipper and the number of~~
 309 ~~her or his fur animal license or fur dealer's license.~~

310 Section 5. Subsections (1), (4), and (5) of section
 311 379.3751, Florida Statutes, are amended to read:

312 379.3751 Taking and possession of alligators; trapping

313 licenses; fees.-

314 (1)(a) A ~~No~~ person may not ~~shall~~ take or possess any
 315 alligator or the eggs thereof without having been issued an
 316 alligator ~~first obtained from the commission a trapping~~ license
 317 ~~and paid the fee~~ as provided in this section. The ~~Such~~ license
 318 shall be dated when issued and remain valid for 12 months after
 319 the date of issuance and shall authorize the person to whom it
 320 is issued to take or possess alligators and their eggs, and to
 321 sell, possess, and process alligators and their hides and meat,
 322 in accordance with law and commission rules. The ~~Such~~ license is
 323 ~~shall~~ not be transferable and is ~~shall~~ not be valid unless it
 324 bears on its face in indelible ink the name of the person to
 325 whom it is issued. The ~~Such~~ license shall be in the personal
 326 possession of the licensee while the licensee ~~such person~~ is
 327 taking alligators or their eggs or is selling, possessing, or
 328 processing alligators or their eggs, hides, or meat. The failure
 329 of the licensee to exhibit the ~~such~~ license to a ~~the~~ commission
 330 law enforcement officer ~~or its wildlife officers~~, when the
 331 licensee ~~such person~~ is found taking alligators or their eggs or
 332 is found selling, possessing, or processing alligators or their
 333 eggs, hides, or meat, is ~~shall be~~ a violation of law.

334 ~~(b) In order to assure the optimal utilization of the~~
 335 ~~estimated available alligator resource and to ensure adequate~~
 336 ~~control of the alligator management and harvest program, the~~
 337 ~~commission may by rule limit the number of participants engaged~~
 338 ~~in the taking of alligators or their eggs from the wild.~~

339 (b)~~(e)~~ A ~~no~~ person who has been convicted of any violation
 340 of s. 379.3015 or s. 379.409 or ~~the~~ rules of the commission
 341 relating to the illegal taking of crocodilian species may not
 342 ~~shall~~ be issued ~~eligible for issuance of~~ a license for a period
 343 of 5 years subsequent to such conviction. If a ~~In the event such~~
 344 violation involves the unauthorized taking of an endangered
 345 crocodilian species, a ~~no~~ license may not ~~shall~~ be issued for 10
 346 years subsequent to the conviction.

347 (c) An alligator trapping license is not required for a
 348 person taking nuisance alligators pursuant to a contract with
 349 the commission. A person assisting contracted nuisance alligator
 350 trappers, unless otherwise exempt under paragraph (d), paragraph
 351 (e), or paragraph (f), is required to possess an alligator
 352 trapping agent license as provided in paragraph (2)(c).

353 (d) An alligator trapping agent license is not required
 354 for a child under 16 years of age taking alligators under an
 355 alligator harvest program implemented by commission rule.

356 (e) An alligator trapping license or alligator trapping
 357 agent license is not required for a person taking alligators
 358 under a military or disabled veterans event permit issued by the
 359 commission pursuant to s. 379.353(2)(q).

360 (f) An alligator trapping license or alligator trapping
 361 agent license shall be issued without fee to any disabled
 362 resident who meets the requirements of s. 379.353(1).

363 (g) A person engaged in the taking of alligators under any
 364 permit issued by the commission which authorizes the take of

365 | alligators is not required to possess a management area permit
 366 | under s. 379.354(8).

367 | (4) A ~~No~~ person may not ~~shall~~ take any alligator egg
 368 | occurring in the wild or possess any such egg unless the ~~such~~
 369 | person has obtained, or is a licensed agent of another person
 370 | who has obtained, an alligator egg collection permit. The
 371 | alligator egg collection permit shall be required in addition to
 372 | the alligator farming license provided in paragraph (2)(d). The
 373 | commission may ~~is authorized to~~ assess a fee for issuance of the
 374 | alligator egg collection permit of up to \$5 per egg authorized
 375 | to be taken or possessed pursuant to such permit. Contingent
 376 | upon an annual appropriation for alligator marketing and
 377 | education activities ~~Irrespective of whether a fee is assessed,~~
 378 | \$1 per egg collected and retained, excluding eggs collected on
 379 | private wetland management areas, shall be transferred from the
 380 | alligator management program to the General Inspection Trust
 381 | Fund, to be administered by the Department of Agriculture and
 382 | Consumer Services for the purpose of providing marketing and
 383 | education services with respect to alligator products produced
 384 | in this state, notwithstanding other provisions in this chapter.

385 | ~~(5) The commission shall adopt criteria by rule to~~
 386 | ~~establish appropriate qualifications for alligator collectors~~
 387 | ~~who may receive permits pursuant to this section.~~

388 | Section 6. Section 379.3752, Florida Statutes, is amended
 389 | to read:

390 | 379.3752 Required tagging of alligators and hides; fees;

391 revenues.—The tags provided in this section shall be required in
 392 addition to any license required under s. 379.3751.

393 (1) A ~~No~~ person may not ~~shall~~ take any alligator occurring
 394 in the wild or possess any such alligator unless such alligator
 395 is subsequently tagged in the manner required by commission
 396 rule. For the tag required for an alligator hatchling, the
 397 commission is authorized to assess a fee of not more than \$15
 398 for each alligator hatchling tag issued. ~~The commission shall~~
 399 ~~expend one third of the revenue generated from the issuance of~~
 400 ~~the alligator hatchling tag for alligator husbandry research.~~

401 (2) ~~The commission may require that an alligator hide~~
 402 ~~validation tag (CITES tag) be affixed to the hide of any~~
 403 ~~alligator taken from the wild and that such hide be possessed,~~
 404 ~~purchased, sold, offered for sale, or transported in accordance~~
 405 ~~with commission rule.~~ The commission may ~~is~~ authorized to assess
 406 a fee of up to \$30 for each alligator hide validation tag
 407 issued. Contingent upon an annual appropriation for alligator
 408 marketing and education activities ~~Irrespective of whether a fee~~
 409 ~~is assessed,~~ \$5 per validated hide, excluding those validated
 410 from public hunt programs and alligator farms, shall be
 411 transferred from the alligator management program to the General
 412 Inspection Trust Fund, to be administered by the Department of
 413 Agriculture and Consumer Services for the purpose of providing
 414 marketing and education services with respect to alligator
 415 products produced in this state, notwithstanding other
 416 provisions in this chapter.

417 ~~(3) The number of tags available for alligators taken~~
 418 ~~pursuant to a collection permit shall be limited to the number~~
 419 ~~of tags determined by the commission to equal the safe yield of~~
 420 ~~alligators as determined pursuant to s. 379.3013.~~

421 Section 7. Paragraph (a) of subsection (2) of section
 422 379.401, Florida Statutes, is amended to read:

423 379.401 Penalties and violations; civil penalties for
 424 noncriminal infractions; criminal penalties; suspension and
 425 forfeiture of licenses and permits.-

426 (2)(a) LEVEL TWO VIOLATIONS.-A person commits a Level Two
 427 violation if he or she violates any of the following provisions:

428 1. Rules or orders of the commission relating to seasons
 429 or time periods for the taking of wildlife, freshwater fish, or
 430 saltwater fish.

431 2. Rules or orders of the commission establishing bag,
 432 possession, or size limits or restricting methods of taking
 433 wildlife, freshwater fish, or saltwater fish.

434 3. Rules or orders of the commission prohibiting access or
 435 otherwise relating to access to wildlife management areas or
 436 other areas managed by the commission.

437 4. Rules or orders of the commission relating to the
 438 feeding of ~~wildlife, freshwater fish, or~~ saltwater fish.

439 5. Rules or orders of the commission relating to landing
 440 requirements for freshwater fish or saltwater fish.

441 6. Rules or orders of the commission relating to
 442 restricted hunting areas, critical wildlife areas, or bird

443 sanctuaries.

444 7. Rules or orders of the commission relating to tagging
445 requirements for wildlife and fur-bearing animals.

446 8. Rules or orders of the commission relating to the use
447 of dogs for the taking of wildlife.

448 9. Rules or orders of the commission which are not
449 otherwise classified.

450 10. Rules or orders of the commission prohibiting the
451 unlawful use of finfish traps.

452 11. All prohibitions in this chapter which are not
453 otherwise classified.

454 12. Section 379.33, prohibiting the violation of or
455 noncompliance with commission rules.

456 13. Section 379.407(7), prohibiting the sale, purchase,
457 harvest, or attempted harvest of any saltwater product with
458 intent to sell.

459 14. Section 379.2421, prohibiting the obstruction of
460 waterways with net gear.

461 15. Section 379.413, prohibiting the unlawful taking of
462 bonefish.

463 16. Section 379.365(2)(a) and (b), prohibiting the
464 possession or use of stone crab traps without trap tags and
465 theft of trap contents or gear.

466 17. Section 379.366(4)(b), prohibiting the theft of blue
467 crab trap contents or trap gear.

468 18. Section 379.3671(2)(c), prohibiting the possession or

469 use of spiny lobster traps without trap tags or certificates and
 470 theft of trap contents or trap gear.

471 19. Section 379.357, prohibiting the possession of tarpon
 472 without purchasing a tarpon tag.

473 ~~20. Rules or orders of the commission prohibiting the~~
 474 ~~feeding or enticement of alligators or crocodiles.~~

475 ~~20.21.~~ Section 379.105, prohibiting the intentional
 476 harassment of hunters, fishers, or trappers.

477 Section 8. Section 379.412, Florida Statutes, is created
 478 to read:

479 379.412 Penalties for feeding wildlife and freshwater
 480 fish.—

481 (1)(a) The penalties in this section apply to a violation
 482 of any rule or order of the commission that prohibits or
 483 restricts:

484 1. Feeding wildlife or freshwater fish with food or
 485 garbage;

486 2. Attracting or enticing wildlife or freshwater fish with
 487 food or garbage; or

488 3. Allowing the placement of food or garbage in a manner
 489 that attracts or entices wildlife or freshwater fish.

490 (b) This section does not apply to rules or orders of the
 491 commission relating to:

492 1. Animals held in captivity;

493 2. Restricting the taking or hunting of species over bait
 494 or intentionally placed or deposited food; or

495 | 3. Restricting the taking or hunting of species in
 496 | proximity to feeding stations.

497 | (2) A person who violates a prohibition or restriction
 498 | identified in subsection (1):

499 | (a) For a first violation, commits a noncriminal
 500 | infraction, punishable by a civil penalty of \$100.

501 | 1. A person cited for a violation under this paragraph
 502 | shall sign and accept a citation to appear before the county
 503 | court. The issuing officer may indicate on the citation the time
 504 | and location of the scheduled hearing and shall indicate the
 505 | applicable civil penalty.

506 | 2. A person cited for a violation may pay the civil
 507 | penalty by mail or in person within 30 days after receipt of the
 508 | citation. If the civil penalty is paid, the person is deemed to
 509 | have admitted committing the violation and to have waived his or
 510 | her right to a hearing before the county court. Such admission
 511 | may not be used as evidence in any other proceedings except to
 512 | determine the appropriate fine for any subsequent violations.

513 | 3. A person who refuses to accept a citation, who fails to
 514 | pay the civil penalty for a violation, or who fails to appear
 515 | before a county court as required commits a misdemeanor of the
 516 | second degree, punishable as provided in s. 775.082 or s.
 517 | 775.083.

518 | 4. A person who elects to appear before the county court
 519 | or who is required to appear before the county court is deemed
 520 | to have waived the limitations on civil penalties provided under

521 this paragraph. After a hearing, the county court shall
 522 determine if a violation has been committed, and if so, may
 523 impose a civil penalty of not less than \$100. A person found
 524 guilty of committing a violation may appeal that finding to the
 525 circuit court. The commission of a violation must be proved
 526 beyond a reasonable doubt.

527 (b) For second and subsequent violations, when all
 528 violations are related to freshwater fish or wildlife other than
 529 bears or alligators or other crocodilians, commits a misdemeanor
 530 of the second degree, punishable as provided in s. 775.082 or s.
 531 775.083.

532 (c) For a second violation, when all violations are
 533 related to bears or alligators or other crocodilians, commits a
 534 misdemeanor of the second degree, punishable as provided in s.
 535 775.082 or s. 775.083.

536 (d) For a third violation, when all violations are related
 537 to bears or alligators or other crocodilians, commits a
 538 misdemeanor of the first degree, punishable as provided in s.
 539 775.082 or s. 775.083.

540 (e) For a fourth or subsequent violation, when all
 541 violations are related to bears or alligators or other
 542 crocodilians, commits a felony of the third degree, punishable
 543 as provided in s. 775.082, s. 775.083, or s. 775.084.

544 (3) As used in this section, the term "violation" means
 545 any judicial disposition other than acquittal or dismissal.

546 Section 9. Sections 379.3011, 379.3013, 379.3016, and

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547 | 379.3017, Florida Statutes, are repealed.

548 | Section 10. This act shall take effect upon becoming a

549 | law.