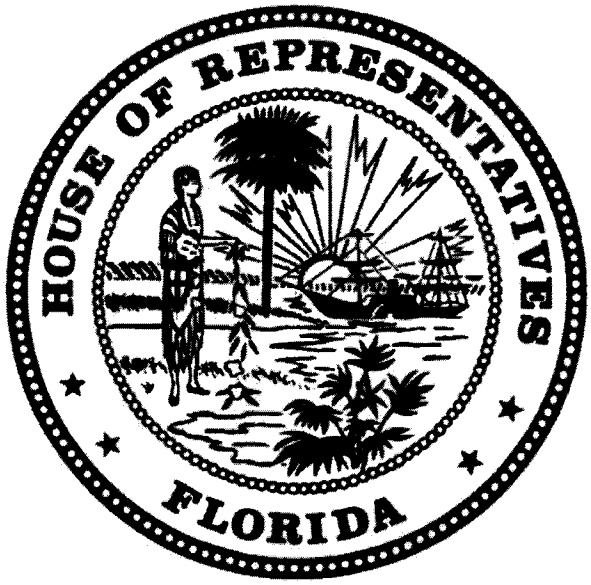


# State Affairs Committee

**Thursday, March 26, 2015**
**1:00 PM**
**Morris Hall (17 HOB)**

**Meeting Packet**

**Steve Crisafulli**
**Speaker**

**Matt Caldwell**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

| | |
|---|---|
| **Start Date and Time:** | Thursday, March 26, 2015 01:00 pm |
| **End Date and Time:** | Thursday, March 26, 2015 03:00 pm |
| **Location:** | Morris Hall (17 HOB) |
| **Duration:** | 2.00 hrs |

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

CS/CS/HB 549 Membership Associations by Appropriations Committee, Government Operations Subcommittee, Diaz, M.
CS/HB 565 Retirement by Government Operations Subcommittee, Beshears
HB 719 Florida State Employees' Charitable Campaign by Cortes, B.
CS/HB 841 Contaminated Sites by Agriculture & Natural Resources Subcommittee, Drake
CS/HB 917 Cattle Market Development Act by Agriculture & Natural Resources Subcommittee, Combee, Albritton
HB 7021 Fish and Wildlife Conservation Commission by Agriculture & Natural Resources Subcommittee, Sullivan
HB 7023 Administrative Procedures by Rulemaking Oversight & Repeal Subcommittee, Ray
HB 7025 Administrative Procedures by Rulemaking Oversight & Repeal Subcommittee, Richardson
HB 7081 Ratification of Rules/Minimum Flows & Levels and Recovery & Prevention Strategies/DEP by Rulemaking Oversight & Repeal Subcommittee, Beshears
HB 7083 Ratification of Rules/Construction & Demolition Debris Disposal and Recycling/DEP by Rulemaking Oversight & Repeal Subcommittee, Beshears
HB 7089 OGSR/Credit History Information and Credit Scores/OFR by Government Operations Subcommittee, Narain
HB 7101 OGSR/Victims of Stalking or Aggravated Stalking by Government Operations Subcommittee, Narain

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

PCB SAC 15-02 -- State Lands

**NOTICE FINALIZED on 03/24/2015 16:17 by Love.John**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 549 Membership Associations that Receive Public Funds
**SPONSOR(S):** Appropriations Committee, Government Operations Subcommittee, Diaz, Jr. and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1114

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 8 Y, 4 N, As CS | Moore | Williamson |
| 2) Appropriations Committee | 20 Y, 7 N, As CS | White | Leznoff |
| 3) State Affairs Committee | | Moore, A. | Camechis |

### SUMMARY ANALYSIS

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation. The Act authorizes not for profit corporations to be created for any lawful purpose or purposes not for pecuniary profit and not specifically prohibited to corporations by other state laws.

Not for profit corporations are required to submit an annual report to the Department of State that contains basic information about the corporation, including the date of incorporation, the names and addresses of the corporation's directors and principal officers, and the addresses of certain corporate offices.

A not for profit corporation may receive public funds from the state or a local government in certain situations, such as through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.

The bill defines the term "membership association" as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers, that operates, controls, and supervises public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The bill specifies that the term does not include a labor organization or an entity funded through the Justice Administrative Commission.

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include contact information for the membership association, officers and representatives of the membership association, and any affiliates of the membership association. The report must also include information about the membership association's finances, including the amount of the fee required to become a member and of the annual membership dues, a copy of the current financial statements, a description of assets and liabilities, a description of salary and allowances paid to each officer and employee who received more than $10,000 from the membership association during the preceding fiscal year, the amount of the benefits packages paid to each principal officer, and the amount of disbursements for lobbying activity and litigation.

The bill also prohibits a membership association from expending moneys received from public funds on litigation against the state.

The bill may have an indeterminate positive fiscal impact on state government, and may have an indeterminate but likely minimal negative fiscal impact on the private sector. *See* Fiscal Analysis section.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.[1] The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.[2] The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.[3]

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.[4] Officers and directors of certain not for profit corporations are also protected by the same immunity from civil liability provided to directors of for profit corporations.[5] Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.[6]

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.[7]

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose."[8] The state or a local government may provide public funds to a

[1] Chapter 90-179, L.O.F.
[2] Section 617.0301, F.S.
[3] *Id.*
[4] *See* ss. 617.0302 and 607.0302, F.S.
[5] *See* ss. 617.0834 and 607.0831, F.S.
[6] *See* 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.
[7] Section 617.1622, F.S.
[8] Section 215.85(3)(b), F.S.

not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.[9]

**Effect of Proposed Changes**

The bill defines the term "membership association" as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers, that operates, controls, and supervises public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The bill specifies that the term does not include a labor organization or an entity funded through the Justice Administrative Commission.[10]

The bill requires a membership association to file an annual report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must include the following information:

- The name and address of the membership association and any parent membership association or any state, national, or international membership association with which it is affiliated;
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association;
- The amount of the fee required to become a member of the membership association, if any, and of the annual dues that each member must pay;
- The current financial statements of the membership association;
- A copy of the current constitution and bylaws of the membership association;
- A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year;
- A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 in the aggregate from the membership association and any other state, national, or international membership association affiliated with it;
- The annual amount of the benefit packages paid to each of the principal officers of the membership association, including health, major medical, vision, dental, and life insurance as well as retirement plans and automobile allowances;
- The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate;
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement; and
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill prohibits a membership association from expending moneys received from public funds, as defined in s. 215.85, F.S., on litigation against the state.

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[9] *See, e.g.,* Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).

[10] Current law defines a labor organization as "any organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state." The definition also includes an "employee organization," as defined in s. 447.203(11), F.S., at such time as it seeks to register pursuant to s. 447.305, F.S. Section 447.02(1), F.S.

B. SECTION DIRECTORY:

**Section 1.** creates s. 617.221, F.S., relating to membership associations that receive public funds.

**Section 2.** provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on state government as a result of reducing litigation against the state by prohibiting membership associations from using monies received from public funds to pay for such litigation.

2. Expenditures:

   The bill may have an insignificant but likely minimal negative fiscal impact on the state as a result of the Legislature having to receive and process the required annual reports from membership associations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate but likely minimal negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Technical Amendment
On lines 20-21 of the bill, the phrase "constitutional officers, that operates, controls, and supervises" should read "constitutional officers that operate, control, and supervise."

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Government Operations Subcommittee heard a proposed committee substitute for HB 549 and reported the bill favorably with committee substitute.

The bill as filed created reporting requirements for an association of government officials receiving more than 25 percent of its annual budget from state sources. It required that the association annually submit the required information to the Commission on Ethics. In addition, the bill prohibited an organization from using funds received from state sources to pursue litigation against the state.

The committee substitute:

- Defines a "membership association" as a corporation not for profit whose membership includes elected or appointed public officers and that receives at least 25 percent of its annual revenue from public funds, excluding labor organizations;
- Requires a membership association to file an annual report containing certain contact and financial information with the House Speaker and Senate President by January 1 of each year; and
- Prohibits a membership association from expending moneys received from public funds on litigation against the state.

On March 19, 2015, the Appropriations Committee adopted one amendment and reported the bill favorably with a committee substitute. The committee substitute defines a "membership association" as a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers that operate, control and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The committee substitute also added that the term "membership association" does not include entities that are funded through the Justice Administration Commission.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.

A bill to be entitled

An act relating to membership associations; creating s. 617.221, F.S.; defining the term "membership association"; requiring a membership association to file an annual report with the Legislature; specifying required elements of the report; prohibiting a membership association from expending moneys received from public funds on litigation against the state; providing an effective date.

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

Section 1. Section 617.221, Florida Statutes, is created to read:

617.221 Membership associations; reporting requirements; restriction on use of funds.—

(1) As used in this section, the term "membership association" means a corporation not for profit, including a department or division of such corporation, the majority of whose board members are constitutional officers, that operates, controls, and supervises public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The term does not include a labor organization as defined in s. 447.02 or an entity funded through

the Justice Administrative Commission.

(2) A membership association shall file a report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must provide:

(a) The name and address of the membership association and any parent membership association or any state, national, or international membership association with which it is affiliated.

(b) The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.

(c) The amount of the fee required to become a member of the membership association, if any, and the annual dues each member must pay.

(d) The current annual financial statements of the membership association, as described in s. 617.1605.

(e) A copy of the current constitution and bylaws of the membership association.

(f) A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year.

(g) A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 in the aggregate from

the membership association and any other state, national, or international membership association affiliated with the membership association.

(h) The annual amount of the following benefit packages paid to each of the principal officers of the membership association:

1. Health, major medical, vision, dental, and life insurance.

2. Retirement plans.

3. Automobile allowances.

(i) The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate.

(j) The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement.

(k) The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

(3) A membership association may not expend moneys received from public funds, as defined in s. 215.85(3), on litigation against the state.

Section 2. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 549 (2015)

Amendment No. 1

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Diaz, M. offered the following:

**Amendment**

Remove lines 20-21 and insert:

whose board members are constitutional officers that operate, control, and supervise public entities that receive annual

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 565 Retirement
**SPONSOR(S):** Government Operations Subcommittee, Beshears
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1054

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 12 Y, 0 N, As CS | Harrington | Williamson |
| 2) Appropriations Committee | 27 Y, 0 N | Delaney | Leznoff |
| 3) State Affairs Committee | | Harrington | Camechis |

## SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 187 cities and 268 independent hospital districts and special districts that have elected to join the system.

The membership of the FRS is divided into five membership classes, including the Senior Management Service Class (SMSC), which is less than 2 percent of the total membership of the FRS. Once a position has been designated as a SMSC position, it is not removed from the class unless the duties and responsibilities of the position change substantially and it therefore no longer meets the requirements for participation in the class. In 1997, a 6-month window was provided to local governments to allow them to reassess positions previously designated as SMSC, and to request removal from the class of any such positions that it deems appropriate.

The bill provides a similar 6-month window to allow local agency employers to reassess positions previously designated as SMSC positions and to request removal from the class of any such positions that it deems appropriate. After the initial window provided in 2015, the bill allows for possible subsequent reviews and reclassifications every five years.

The bill could have an indeterminate positive fiscal impact on local governments that use the additional flexibility to reduce the number of positions classified as Senior Management. *See* Fiscal Comments section for further discussion.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[1]

The FRS is governed by the Florida Retirement System Act.[2] The FRS, which is a multiple-employer, contributory plan,[3] provides retirement income benefits to 622,089 active members, 363,034 retired members and beneficiaries, and 38,058 members of the Deferred Retirement Option Program.[4] It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 187 cities and 268 independent hospital districts and special districts that have elected to join the system.[5]

The membership of the FRS is divided into five membership classes:[6]

- Regular Class[7] consists of 543,434 members (87.35 percent of the membership);
- Special Risk Class[8] includes 68,593 members (11.02 percent);
- Special Risk Administrative Support Class[9] has 84 members (.01 percent);
- Elected Officers' Class[10] has 2,187 members (0.35 percent); and
- Senior Management Service Class[11] has 7,791 members (1.25 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

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[1] *The Florida Retirement System Comprehensive Annual Financial Report*, Fiscal Year Ended June 30, 2014, at 29. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 6, 2015).

[2] Chapter 121, F.S.

[3] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after June 30, 2011.

[4] As of June 30, 2014, the FRS defined benefit plan, also known as the pension plan, had 512,364 members, and the defined contribution plan, also known as the investment plan, had 109,725 members. *The Florida Retirement System Comprehensive Annual Financial Report,* Fiscal Year Ended June 30, 2014, at 112.

[5] Florida Retirement System Participating Employers for Plan Year 2014-15, prepared by the Department of Management Services, Division of Retirement, Revised February 2015, at 8. A copy of the document can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 9, 2015).

[6] *The Florida Retirement System Comprehensive Annual Financial Report,* Fiscal Year Ended June 30, 2014, at 115.

[7] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

[8] The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

[9] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. Section 121.0515(8), F.S.

[10] The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

[11] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

Senior Management Service Class Designation

The Senior Management Service Class (SMSC) was established as a membership class in 1987.[12] SMSC members fill senior level management positions assigned by law to the SMSC or authorized by law as eligible for SMSC designation. Participation in the SMSC must be limited to and compulsory for any member of the FRS who holds a position in the Senior Management Service of the State, established by part III of chapter 110, F.S.,[13] unless the member elects to participate in the Senior Management Service Optional Annuity Program.[14]

Since 1987, the Legislature has amended the list of who must participate in the SMSC.[15] In 1990, local senior managers were added to the class. Participation in the SMSC is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Each local agency employer may designate up to 10 additional qualified positions (in addition to the city or county manager or appointed school superintendent) to be included in the SMSC. If the agency has 100 or more regularly established positions, it can also designate one additional SMSC position for every 100 regularly established positions, so long as the total number of additional positions does not exceed one percent of the regularly established positions within the local agency.[16]

Each designated position must be:[17]

- Non-elective managerial or policymaking;
- Filled by an employee who is not subject to a continuing contract and serves at the pleasure of the employer without civil service protection; and
- Filled by an employee who is head of an organizational unit or has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

Once a local agency position has been designated as a SMSC position, it is not removed from the class unless the duties and responsibilities of the position change substantially and it therefore no longer meets the requirements for participation in the class of membership.[18] In 1997, a 6-month period was provided to allow local governments time to review positions designated as SMSC and to request removal from the class of any such position it deemed appropriate. The period lasted from July 1, 1997, through December 31, 1997.[19]

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.[20] The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS

[12] Section 121.055, F.S.

[13] Section 110.402(1), F.S., provides that the Senior Management Service is created as a separate system of personnel administration for positions in the executive branch the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. Section 110.403(1)(a), F.S., provides that the number of positions included in the Senior Management Service may not exceed one percent of the total full-time positions in the career service.

[14] The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for Senior Management Service members. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

[15] *See* s. 121.055, F.S.

[16] Section 121.055(1)(b), F.S.

[17] *Id.*

[18] Section 121.055(2), F.S.

[19] Section 121.055(2)(b), F.S.

[20] Section 121.70(1), F.S.

retirement plans. The SMSC employer contribution rate is 4.80 percent.[21] The contribution rate for the Regular Class is 3.53 percent.[22]

Benefit Calculations

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.[23] The accrual rate varies by class. The accrual rate for members of the SMSC is 2.00 percent.[24]

Rather than using a calculation to determine the member's retirement benefit, a member's investment plan benefit is the member's account balance, which is the employee and employer contributions, plus or minus investment returns, minus expenses and fees. The amount deposited in the member's account varies based on the member's class. The current deposit rate for the SMSC is 7.67 percent.[25]

Regardless of employee class, all employees contribute three percent of their compensation towards retirement.[26]

**Effect of Proposed Bill**

The bill allows local agency employers to reassess positions previously designated as SMSC positions. The bill provides a 6-month window to allow a local agency employer time to reassess its designation of positions previously designated as SMSC, and to request removal from the class of any such positions that it deems appropriate. After the initial period in 2015, the bill provides that the window for reclassification opens once every five years.

B. SECTION DIRECTORY:

Section 1. amends s. 121.055, F.S., authorizing local agency employers to reassess the designation of positions for inclusion in the SMSC.

Section 2. provides 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.

[21] Section 121.71(4), F.S.
[22] *Id.*
[23] Section 121.091, F.S.
[24] Section 121.091(1)(a)3., F.S.
[25] Section 121.72(5), F.S.
[26] Section 121.71(3), F.S.

2. Expenditures:

None. *See* Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is permissive in nature. It doesn't require a local agency to review its senior management positions or than any specific action be taken as a result of such review. Additionally, the bill does not change the maximum number of positions that public employers can designate as senior management. The bill simply provides a periodic window to facilitate the process for local agencies to reassess and adjust the classification of certain high level positions. The bill may have an indeterminate positive fiscal impact on local governments, as the local governments may use the increased flexibility to reduce the number of positions designated as senior management, thereby reducing associated FRS contributions.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Government Operations Subcommittee adopted one amendment and reported the bill favorable with a committee substitute. The committee substitute removes the reference to the year 2015 and 2016, to clarify that the 6-month window opens every five years from July 1 through December 31.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to retirement; amending s. 121.055, F.S.; authorizing local agency employers to reassess the designation of positions for inclusion in the Senior Management Service Class; providing for removal of certain positions; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(2)

(b) Effective July 1, 2015 ~~1997~~, and every 5 years thereafter, each local agency employer may between July 1~~, 1997,~~ and December 31~~, 1997,~~ reassess its designation of positions for inclusion in the Senior Management Service Class as provided in paragraph (1)(b), and may request removal from the class of any such positions that it deems appropriate. Such removal of any previously designated positions shall be effective on the first day of the month following written notification of removal to the division before ~~prior to~~ January 1~~, 1998~~.

Section 2. This act shall take effect July 1, 2015.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 719 Florida State Employees' Charitable Campaign
**SPONSOR(S):** Cortes, B.
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 694

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 12 Y, 0 N | Toliver | Williamson |
| 2) Government Operations Appropriations Subcommittee | 13 Y, 0 N | White | Topp |
| 3) State Affairs Committee | | Toliver LT | Camechis |

### SUMMARY ANALYSIS

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services (DMS). It is the only authorized charitable fundraising drive directed toward state employees within work areas during works hours, and for which the state will provide payroll deduction. State officer and employee participation is completely voluntary.

During an FSECC fundraising drive a state officer or employee may contribute to various participating charitable organizations; however, the contribution must be designated. In addition, a state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the officer's or employee's contribution.

Participation in the FSECC is limited to any nonprofit charitable organization that meets certain criteria. Current law also provides specific eligibility criteria for an independent unaffiliated agency, national agency, or an international service agency.

The bill allows state officers and employees to contribute undesignated funds to the FSECC as part of a campaign event. It directs the fiscal agent to direct undesignated contributions to participating charitable organizations in proportion to all designated FSECC contributions received by that organization.

The bill eliminates the requirement that local steering committees be established in each fiscal agent area. It also eliminates the additional eligibility requirements for an independent unaffiliated agency, national agency, and international service agency.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**The Florida State Employees' Charitable Campaign**

Present Situation

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services (DMS).[1] It is the only authorized charitable fundraising drive "directed toward state employees within work areas during works hours, and for which the state will provide payroll deduction."[2] State officer and employee participation is completely voluntary.[3]

During an FSECC fundraising drive, a state officer or employee may contribute to various participating charitable organizations; however, the contribution must be designated.[4] In addition, a state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization[5] as the recipient of the officer's or employee's contribution.

Participation in the FSECC is limited to any nonprofit charitable organization that has as its principal mission public health and welfare, education, environmental restoration and conservation, civil and human rights, or any nonprofit charitable organization engaged in the relief of human suffering and poverty.[6] Current law provides specific eligibility criteria for an independent unaffiliated agency,[7] national agency,[8] or an international service agency.[9]

DMS procures a fiscal agent[10] or agents as it deems necessary, to "receive, account for, and distribute charitable contributions among participating charitable organizations."[11] DMS appoints a statewide steering committee to assist it in oversight, development, and administration of the FSECC.[12] DMS also

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[1] Section 110.181(1)(a), F.S.

[2] *Id.*

[3] Section 110.181(1)(b), F.S.

[4] *Id.*

[5] The FSECC website has a provision within their "FAQs for Donors" regarding designations: "[T]he FSECC is a donor-designated campaign, and it is Florida law that every FSECC donation must have a charity designation. When you complete your FSECC pledge form, you will be asked for a code(s) of the charity/charities of your choice as listed in the FSECC Approved Charity brochure, and this will ensure that your donation goes to support the causes that are important to you." http://www.fsecc.com/faqs-for-donors/ (last visited Feb. 22, 2015).

[6] Section 110.181(1)(c), F.S.

[7] An independent unaffiliated agency must be a statewide entity whose programs provide substantial, direct, hands-on services that meet basic human or environmental needs and extend throughout the year and through the state. Section 110.181(1)(d), F.S. In addition, DMS has promulgated two rules regarding the statewide independent unaffiliated agency. Fla. Admin. Code R. 60L-39.0015(l) (2013) defines an independent unaffiliated agency as a charitable organization that is not an umbrella group or a member of any umbrella group. Fla. Admin. Code R. 60L-39.004(4) (2013) provides that an independent unaffiliated agency will be deemed to be providing services throughout the year and throughout the state in accordance with s. 110.181(1)(d), F.S., if it demonstrates that services were provided every month of the calendar year and in every fiscal agent area.

[8] A national agency must demonstrate, through a well-defined program, direct services meeting basic human or environmental needs which are readily available, being administered, or providing a substantial direct benefit to the residents of Florida. Section 110.181(f), F.S. DMS further defines a national agency as an "umbrella group or an affiliated member of an umbrella group serving basic human or environmental needs inside the United States. This definition excludes any charitable organization that is a member or affiliate of the United Way of Florida, Inc." Fla. Admin. Code R. 60L-39.0015(n) (2013).

[9] An international service agency must have well-defined programs that meet basic human or environmental needs outside the United States with no duplication of existing programs. Section 110.181(1)(e), F.S.

[10] The current statewide fiscal agent is Solix, Inc. FLORIDA STATE EMPLOYEES' CHARITABLE CAMPAIGN, http://www.fsecc.com/administration/ (last visited Feb 23, 2015).

[11] Section 110.181(2)(a), F.S.

[12] Section 110.181(4), F.S.; Fla. Admin. Code R. 60L-39.003 (2013).

appoints local steering committees for each fiscal agent area.[13] The local steering committee is composed of state employees and it is tasked with assisting the fiscal agent with the administration of the FSECC.[14]

Background

Prior to 2012, the FSECC could accept non-designated contributions.[15] The local steering committee would direct the allocation of non-designated funds.[16] In 2012, the legislature required that FSECC contributions be designated to a participating charitable organization.[17]

**Effect of the Bill**

The bill allows state officers and employees to contribute undesignated funds to the FSECC as part of a campaign event. The bill directs the fiscal agent to direct undesignated contributions to participating charitable organizations in proportion to all designated FSECC contributions received by that organization. For instance, if a charitable organization receives 10 percent of all designated FSECC contributions then that organization would receive a corresponding 10 percent of all undesignated contributions.

The bill eliminates the requirement that local steering committees be established in each fiscal agent area. It also eliminates the additional eligibility requirements for an independent unaffiliated agency, national agency, and international service agency; thus, making eligibility criteria for participation in the FSECC the same for all charitable organizations.

B. SECTION DIRECTORY:

Section 1: Amends s. 110.181, F.S., relating to the Florida State Employees' Charitable Campaign.

Section 2: Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

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[13] Section 110.181(2)(d), F.S.; Fla. Admin. Code R. 60L-39.008 (2013).
[14] *Id.*
[15] *See* s. 110.181(1)(b), F.S. (2011).
[16] *See* s. 110.181(2)(d), F.S. (2011).
[17] *See* Ch. 2012-215, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require any additional rulemaking authority for DMS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Management Services
According to DMS, the bill will allow it to eliminate administratively burdensome and ineffective procedures agencies must follow in order to ensure contributions collected at FSECC fundraising events are designated.[18] Currently, DMS allows small agency fundraising events, wherein small donations are collected and pooled together. According to DMS, requiring these small donations to be specifically designated has abrogated any efficiency initially gained from the designation requirement.[19]

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[18] Department of Management Services, Bill Analysis of HB 719 (Feb. 13, 2015), on file with the Government Operations Subcommittee.
[19] *Id.*

A bill to be entitled

An act relating to the Florida State Employees' Charitable Campaign; amending s. 110.181, F.S.; providing an exception to the requirement that state officers and employees designate a charitable organization to receive their contributions from the Florida State Employees' Charitable Campaign; deleting requirements for independent unaffiliated agencies, international service agencies, and national agencies; requiring the fiscal agent selected by the Department of Management Services to distribute undesignated funds in a specified manner; deleting the requirement that a local steering committee be established in each fiscal agent area; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 110.181, Florida Statutes, are amended to read:

110.181 Florida State Employees' Charitable Campaign.—

(1) CREATION AND ORGANIZATION OF CAMPAIGN.—

(a) The Department of Management Services shall establish and maintain, in coordination with the payroll system of the Department of Financial Services, an annual Florida State Employees' Charitable Campaign. Except as provided in subsection (5), this annual fundraising drive is the only authorized

charitable fundraising drive directed toward state employees within work areas during work hours, and for which the state will provide payroll deduction.

(b) State officers' and employees' contributions toward the Florida State Employees' Charitable Campaign must be entirely voluntary. State officers and employees shall ~~must~~ designate a charitable organization to receive their ~~such~~ contributions unless such contributions are collected as part of a campaign event.

(c) Participation in the annual Florida State Employees' Charitable Campaign is ~~must be~~ limited to any nonprofit charitable organization that ~~which~~ has as its principal mission:

1. Public health and welfare;

2. Education;

3. Environmental restoration and conservation;

4. Civil and human rights; or

5. ~~Any nonprofit charitable organization engaged in~~ The relief of human suffering and poverty.

~~(d) An independent unaffiliated agency must be a statewide entity whose programs provide substantial, direct, hands-on services that meet basic human or environmental needs and extend throughout the year and throughout the state.~~

~~(e) An international service agency must have well-defined programs that meet basic human or environmental needs outside the United States with no duplication of existing programs.~~

~~(f) A national agency must demonstrate, through a well-~~

~~defined program, direct services meeting basic human or environmental needs which are readily available, being administered, or providing a substantial direct benefit to the residents of this state.~~

(d) ~~(g)~~ The financial records of a ~~Any~~ nonprofit charitable organization participating in the Florida State Employees' Charitable Campaign must be ~~have its financial records~~ audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.

(e) ~~(h)~~ Organizations ineligible to participate in the Florida State Employees' Charitable Campaign include, but are not limited to, the following:

1. Organizations whose fundraising and administrative expenses exceed 25 percent, unless extraordinary circumstances can be demonstrated.

2. Organizations whose activities contain an element that is more than incidentally political in nature or whose activities are primarily political, religious, professional, or fraternal in nature.

3. Organizations that ~~which~~ discriminate against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation.

4. Organizations not properly registered as a charitable organization as required by the Solicitation of Contributions Act, ss. 496.401-496.424.

5. Organizations that ~~which~~ have not received tax-exempt

status under s. 501(c)(3) of the~~,~~ Internal Revenue Code.

(2) SELECTION OF FISCAL AGENTS; COST.—

(a) The Department of Management Services shall select through the competitive procurement process a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.

(b) The fiscal agent shall withhold the reasonable costs for conducting the campaign and for accounting and distribution to the participating organizations and shall reimburse the department the actual cost for coordinating the campaign in accordance with the rules of the department. In any fiscal year that ~~in which~~ the Legislature specifically appropriates to the department its total costs for coordinating the campaign from the General Revenue Fund, the fiscal agent is not required to reimburse such costs to the department under this subsection. Otherwise, reimbursement will be the difference between actual costs and the amount appropriated.

(c) The fiscal agent shall furnish the department and participating charitable organizations a report of the accounting and distribution activities. Records relating to these activities must ~~shall~~ be open for inspection upon reasonable notice and request.

(d) The fiscal agent shall distribute undesignated funds to each participating organization in direct proportion to the percentage of designated funds pledged to the organization ~~A local steering committee shall be established in each fiscal~~

~~agent area to assist in conducting the campaign. The committee shall be composed of state employees selected by the fiscal agent from among recommendations provided by interested participating organizations, if any, and approved by the Statewide Steering Committee~~.

Section 2. This act shall take effect July 1, 2015.

# 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 | 9 Y, 1 N | Helpling | Massengale |
| 3) State Affairs Committee | | Gregory | Camechis |

## 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]

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[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

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[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 cite.[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 or 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

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[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 risked-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 contaminates, 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.

A bill to be entitled

An act relating to contaminated sites; amending s. 376.301, F.S.; defining the terms "background concentration" and "long-term natural attenuation"; amending s. 376.30701, F.S.; requiring the Department of Environmental Protection to include protocols for the use of long-term natural attenuation where site conditions warrant; requiring specified interactive effects of contaminants to be considered as cleanup criteria; revising how cleanup target levels are applied where surface waters are exposed to contaminated groundwater; authorizing the use of relevant data and information when assessing cleanup target levels; providing that institutional controls are not required under certain circumstances if using alternative cleanup target levels; amending s. 287.0595, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (4) through (22) of section 376.301, Florida Statutes, are redesignated as subsections (5) through (23), respectively, present subsections (23) through (48) of that section are redesignated as subsections (25) through (50), respectively, and new subsections (4) and (24) are

added to that section, to read:

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

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

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

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

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

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

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

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

assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may ~~also is authorized~~, pursuant to criteria provided in this section, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume, if known, at the time of execution of a cleanup agreement, if required, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving

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

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

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

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

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

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

(g) Apply state water quality standards as follows:

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

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

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

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

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

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

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

b. 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, as provided in subparagraph 1.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

287.0595 Pollution response action contracts; department rules.—

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

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 841 (2015)

Amendment No. 1

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Drake offered the following:

**Amendment**

Remove line 34 and insert:

substances at a contaminated site undergoing site rehabilitation.

## 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 | 12 Y, 0 N | Lolley | Massengale |
| 3) State Affairs Committee | | Gregory | Camechis |

### 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]

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[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]

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[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 15$^{th}$ 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.

A bill to be entitled

An act relating to the Cattle Market Development Act; amending s. 570.83, F.S.; renaming the Beef Market Development Act as the Cattle Market Development Act; renaming the Florida Beef Council, Inc., as the Florida Cattle Enhancement Board, Inc.; conforming intent and definitions; removing a provision that deems a cow and nursing calf sold together as one unit; authorizing the Cattle Enhancement Board to impose additional assessments; limiting referenda on per-head-of-cattle assessments to once every 3 years; providing for the Commissioner of Agriculture to appoint a voting member rather than an ex officio, nonvoting member to the governing board of the Cattle Enhancement Board; providing for staggered terms of governing board members; providing for initial and subsequent appointment of governing board members; authorizing the commissioner to initiate a referendum on assessments with certain notice; directing the commissioner to designate a specified number of days for a referendum to take place; removing provisions requiring the board to maintain frequent communication with officers and industry representatives at the state and national levels; removing provisions authorizing the board to sue and be sued without individual liability of the members, to maintain a

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

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

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

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

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

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

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

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

(b) ~~(c)~~ "Board" or "Florida Cattle Enhancement Board" ~~"Council"~~ means the Florida Cattle Enhancement Board ~~Beef Council~~, Inc.

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

(d) ~~(e)~~ "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. The term also includes meatpacking firms and their agents that purchase or consign to purchase cattle.

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

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

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

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

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

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

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

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

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

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

~~4. Establish refund procedures.~~

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

~~(c) The council shall:~~

~~1. Plan, implement, and conduct programs of promotion, research, and consumer information or industry information which are designed to strengthen the cattle industry's market position in this state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products.~~

~~2. Use the proceeds of the assessment for the purpose of funding cattle production and beef research, education, promotion, and consumer and industry information in this state and in the nation.~~

~~3. Plan and implement a cattle and beef industry feedback program in this state.~~

~~4. Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states.~~

~~5. Develop new uses and markets for beef and beef products.~~

~~6. Develop and improve methods of distributing beef and beef products to the consumer.~~

~~7. Develop methods of improving the quality of beef and beef products for the benefit of consumers.~~

~~8. Inform and educate the public concerning the nutritive and economic values of beef and beef products.~~

~~9. Serve as a 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.~~

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

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

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

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

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

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

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

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

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

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

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

(5) GOVERNING BOARD.—

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

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

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

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

4. One ~~a~~ representative of the Florida Farm Bureau Federation.~~;~~

5. One representative of an allied-industry.

6. One representative of the department appointed by the

Commissioner of Agriculture. ~~representative; and~~

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

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

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

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

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

(6) REFERENDUM ON ASSESSMENTS.—

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

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

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

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

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

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

fairness in the referendum process.

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

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

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

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

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

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

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

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

$1 per head of cattle.

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

3. Coordinate the collection of the assessment with other states.

4. Establish refund procedures.

5. Conduct referenda under subsection (6).

6. Plan, implement, and conduct programs of promotion, research, and consumer information or industry information which are designed to strengthen the market position of the cattle industry in this state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products.

7. Use the proceeds of the assessment for the purpose of funding cattle production and beef research, education, promotion, and consumer and industry information in this state and in the nation.

8. Plan and implement a cattle and beef industry feedback program in this state.

9. Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states.

10. Serve as a liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit consumers and industry.

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

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

13.~~1.~~ Receive and disburse funds, pursuant to ~~as prescribed elsewhere in~~ this section ~~act~~, to be used in administering and implementing this section ~~the act~~.

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

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

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

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

15.~~6.~~ Appoint a licensed banking institution to serve as the depository for program funds and to handle disbursements of those funds.

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

~~including the department.~~

16.~~8.~~ Maintain an office in this state.

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

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

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

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

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

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

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

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

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

5.~~8.~~ Employ staff ~~subordinate officers and employees of the council~~, prescribe their duties, and fix their compensation and terms of employment.

6.~~9.~~ Cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program.

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

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

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

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

(9) PAYMENTS TO ORGANIZATIONS.—

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

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

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

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

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

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

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

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

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

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

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

~~(f) The collection agents shall 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 council.~~

(11) REFUNDS.—

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

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

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

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

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

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

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

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

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

(13)~~(14)~~ REPEAL.—This section is repealed October 1, 2020 ~~2019~~, unless reviewed and saved from repeal by the Legislature.

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:** None. **IDEN./SIM. BILLS:** SB 680

| 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 | 10 Y, 0 N | Massengale | Massengale |
| 2) State Affairs Committee | | Gregory | Camechis |

## 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.

## 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]

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[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 only[26] 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.

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[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 resident[35] 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]

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[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 harvesting[43] or the rule relating to illegally taking of any crocodilian 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

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[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]

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[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 posses 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 residents[69] 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:

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[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 Fish and Wildlife Conservation Commission has an appropriation for 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 | • 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 | • 1st Degree Misdemeanor (up to a $1,000 fine and/or up to a year in jail)<br>• Minimum fine of $250[86] |
| Convicted of 2 Level Two violations or higher in the past 5 years | • 1st Degree Misdemeanor (up to a $1,000 fine and/or up to a year in jail)<br>• Minimum fine of $500<br>• 1 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee[87] |
| Convicted of 3 Level Two violations or higher in the past 10 years | • 1st Degree Misdemeanor (up to a $1,000 fine and/or up to a year in jail)<br>• Minimum fine of $750<br>• 3 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee[88] |

### 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

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 379.3012, F.S.; conforming provisions relating to implementation of the alligator management and trapping program to changes made by the act; amending s. 379.357, F.S.; revising the time period for which tarpon tags are valid; removing provisions requiring tax collectors to submit unissued tarpon tags and audit reports to the commission; removing provisions requiring individuals to submit information regarding landed tarpon to the commission; amending s. 379.361, F.S.; removing criteria for issuance of restricted species endorsements on saltwater products licenses; amending s. 379.364, F.S.; removing provisions requiring dealers and buyers of certain hides and furs to submit reports to the commission; removing provisions prohibiting the shipment of hides or furs without specified information; amending s. 379.3751, F.S.; removing provisions authorizing the commission to limit the number of participants engaged in the taking of alligators or their eggs; exempting certain persons from alligator trapping license requirements and fees; providing that certain permitholders engaged in the taking of alligators are not required to possess management area permits; amending s. 379.3752, F.S.;

removing provisions requiring alligator hide validation tags to be affixed to the hide of any alligator taken from the wild; revising provisions requiring the commission to transfer certain revenues for alligator husbandry research; requiring the commission to transfer funds, contingent upon certain appropriations, from the alligator management program to the General Inspection Trust Fund for the purpose of providing marketing and education services regarding alligator products produced in this state; removing provisions authorizing the commission to limit the number of tags available for alligators taken pursuant to a collection permit; amending s. 379.401, F.S.; conforming provisions to changes made by the act; creating s. 379.412, F.S.; providing penalties for the feeding of wildlife and freshwater fish; providing applicability; defining the term "violation"; repealing s. 379.3011, F.S., relating to the alligator trapping program; repealing s. 379.3013, F.S., relating to alligator study requirements; repealing s. 379.3016, F.S., relating to the unlawful sale of alligator products; repealing s. 379.3017, F.S., relating to products derived or made from the skins of other crocodilia; providing an effective date.

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

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

379.3012 Alligator management ~~and trapping~~ program implementation; commission authority.—

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

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

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

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

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

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

~~this section;~~

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

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

~~(c) Provide sales-related services by contract pursuant to state-sanctioned sales if rules governing such services are first promulgated by the commission.~~

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

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

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

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

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

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

(3) An ~~No~~ individual may not ~~shall~~ take, kill, or possess any fish of the species *Megalops atlanticus* ~~megalops atlantica~~, commonly known as tarpon, unless the ~~such~~ individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish. ~~Said individual shall within 5 days after the landing of the fish submit a form to the commission which indicates 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. The commission may refuse to issue new tags to individuals or guides who fail to provide the required information.~~

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

379.361 Licenses.—

(2) SALTWATER PRODUCTS LICENSE.—

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

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

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

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

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

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

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

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

~~sale of saltwater products; or~~

~~e. A certified public accountant's notarized statement attesting to qualifying source and amount of income.~~

~~4. Notwithstanding any other provision of law, any person who owns a retail seafood market or restaurant at a fixed location for at least 3 years, who has had an occupational license for 3 years before January 1, 1990, who harvests saltwater products to supply his or her retail store, and who has had a saltwater products license for 1 of the past 3 license years before January 1, 1990, may provide proof of his or her verification of income and sales value at the person's retail seafood market or restaurant and in his or her saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.~~

~~5. Exceptions from income requirements shall be as follows:~~

~~a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 of the last 5 years.~~

~~b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.~~

~~c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the~~

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

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

~~e. A restricted species endorsement may be issued on an individual saltwater products license to 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.~~

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

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

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

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

~~i. 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 a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license and may only be applied one time per military enlistment.~~

~~j. Until June 30, 2014, a resident military veteran who applies to the commission and who received 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 between September 11, 2001, and June 30, 2014, is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license.~~

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

379.364 License required for fur and hide dealers.—

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

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

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

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

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

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

379.3751 Taking and possession of alligators; trapping

licenses; fees.—

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

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

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

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

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

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

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

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

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

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

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

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

379.3752 Required tagging of alligators and hides; fees;

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

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

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

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

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

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

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

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

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

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

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

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

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

sanctuaries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.~~21.~~ Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.

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

379.412 Penalties for feeding wildlife and freshwater fish.—

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

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

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

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

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

1. Animals held in captivity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Sections 379.3011, 379.3013, 379.3016, and

379.3017, Florida Statutes, are repealed.

Section 10. This act shall take effect upon becoming a law.

Amendment No. 1

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Sullivan offered the following:

**Amendment (with title amendment)**

Between lines 54 and 55, insert:

Section 1. Paragraph (b) of subsection (2) of section 327.37, Florida Statutes, is amended to read:

327.37 Water skis, parasails, aquaplanes, kiteboarding, kitesurfing, and moored ballooning regulated.—

(2)

(b) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity unless such person is wearing a noninflatable ~~type I, type II, type III, or type V~~ personal flotation device currently approved by the United States Coast Guard, and used in accordance with the United States Coast Guard approval label.

Section 2. Subsection (1) of section 327.39, Florida

Statutes, is amended to read:

327.39 Personal watercraft regulated.—

(1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a ~~type I, type II, type III, or type V~~ personal flotation device, other than an inflatable device, currently approved by the United States Coast Guard, and used in accordance with the United States Coast Guard approval label.

Section 3. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is reenacted, and paragraph (b) of that subsection is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the department.

(b) A ~~No~~ person may not ~~shall~~ operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the vessel is wearing a ~~type I, type II, or type III Coast Guard approved~~ personal flotation device currently approved by the United States Coast Guard, and used in accordance with the United States Coast Guard approval label while such vessel is underway. For the purpose of

this section, "underway" means ~~shall mean~~ at all times except when a vessel is anchored, moored, made fast to the shore, or aground.

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

Remove line 3 and insert:

Commission; amending ss. 327.37, 327.39, and 327.50, F.S.; requiring that personal floatation devices be used in accordance with the United States Coast Guard approval label during operation of certain vessels or personal watercraft or while engaged in water skiing, parasailing, aquaplaning, and similar activities; amending s. 379.3012, F.S.; conforming

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7023 PCB RORS 15-01 Administrative Procedures
**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee, Ray
**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7056

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee | 13 Y, 0 N | Rubottom | Rubottom |
| 1) State Affairs Committee | | Harrington | Camechis |

## SUMMARY ANALYSIS

Agencies must review their existing rules to identify and correct deficiencies, improve efficiencies, reduce paperwork and costs, clarify and simplify text, and revise or delete rules that become obsolete, unnecessary, or are redundant of statute. Biennially, each agency head is required to file a report with the Speaker of the House of Representatives, President of the Senate, and the Legislature's Joint Administrative Procedures Committee (JAPC) summarizing the results of this review and revision, suggesting certain legislative changes, and addressing the economic impact of the rules on small business. In 2011, the Legislature suspended biennial reporting for that year and required all agencies to review and report on the economic effect of all then-existing rules by the end of 2013. In the same act, the Legislature required agencies to file a separate annual "regulatory plan" outlining all rulemaking the agency intended to implement in the next fiscal year, except emergency rulemaking.

When a newly-enacted law requires an agency to adopt new or amend current administrative rules for proper implementation, current law requires the agency charged with enforcing that law to formally propose such rules within 180 days of the effective date of the law. While agencies generally comply with this deadline, there are numerous examples of agencies failing to act within 180 days or interpreting the new law as not requiring rulemaking for proper implementation. In some instances this delay or inaction persists for several years.

The bill replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The plan must be certified by the agency head and general counsel and published on the agency's internet website, with a copy of the certification filed with JAPC. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of an agency that fails to comply with specific requirements until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals the retrospective economic review of existing rules and repeals the law pertaining to the online survey.

The bill may have an insignificant fiscal impact on state agencies.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Agency Rulemaking and Reporting Requirements**

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.[2] If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.[3]

Rulemaking authority is delegated by the Legislature[4] by law authorizing an agency to "adopt, develop, establish, or otherwise create"[5] a rule. Agencies do not have discretion whether to engage in rulemaking.[6] To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[7] The grant of rulemaking authority itself need not be detailed.[8] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the agency from exercising unbridled discretion in creating policy or applying the law.[9] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.[10] Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the agency. As such, the Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.

Section 120.54(1)(b), F.S.: The "180 Day" Requirement

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before the implementing rules are adopted.[11] If a law is enacted that requires agency rulemaking for proper implementation, "such rules shall be drafted and formally proposed as provided in [s. 120.54, F.S.] within 180 days after the effective date of

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[1] Section 120.52(16), F.S.; *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

[2] *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).

[3] *McDonald v. Dept. of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. *See State of Florida, Dept. of Administration v. Stevens,* 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Dept. of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Dept. of Transp. v. Blackhawk Quarry Co.*, 528 So. 2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).

[4] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).

[5] Section 120.52(17), F.S.

[6] Section 120.54(1)(a), F.S.

[7] Sections 120.52(8) & 120.536(1), F.S. In 1996, the Legislature extensively revised agency rulemaking under the Administrative Procedure Act to require both the express grant of rulemaking authority and a specific law to be implemented by rule. Chapter 96-159, L.O.F.

[8] *Save the Manatee Club, Inc.,* supra at 599.

[9] *Sloban v. Florida Board of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

[10] *Conner v. Joe Hatton, Inc.,* 216 So. 2d 209 (Fla.1968).

[11] Section 120.54(1)(c), F.S.

the act, unless the act provides otherwise."[12] This "180-day requirement" predates the 1996 APA revisions.[13]

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.[14] Proposed rules can be repeatedly, substantially revised based on public input and may also be withdrawn. Consequently, the 180-day requirement does not ensure prompt rulemaking.

*JAPC Monitoring and Agency Compliance*

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180-day requirement in furtherance of its rulemaking oversight duties.[15] JAPC staff reviews legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules. Where the law appears to mandate new rulemaking[16] or restates an existing mandate for rulemaking, JAPC sends a letter reminding the agency of the 180-day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180-days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180-day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. In recent years, JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking during the period of 2007-2011. At its meeting on February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of JAPC asked whether these agencies treated the statute as a "suggestion" instead of a mandatory rulemaking requirement. Again, on February 2, 2015, JAPC received a report from committee staff reflecting continuing related problems.

*"Directive" vs. "Mandate"*

Courts generally interpret words in statutes such as "shall" or "must" as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.[17] A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,[18] including when the agency does not act within the 180-day requirement. The Administrative Procedure Act (APA) provides no other process to enforce the 180-day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S.: Biennial Reporting

*1996 Reporting Requirement*

As part of the comprehensive revision of the APA in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all

[12] Section 120.54(1)(b), F.S.

[13] The 180 requirement was enacted as chapter 85-104, s. 7, L.O.F.

[14] Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

[15] Joint Rule 4.6.

[16] Such as stating that the agency "shall adopt rules" or "shall establish" or "must establish" a particular standard or policy.

[17] *S.R. v. State,* 346 So.2d 1018, 1019 (Fla. 1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (Fla. 1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So.2d 512, 514 (Fla. 2d DCA 2000).

[18] Section 120.54(7)(a), F.S. If the agency denies the petition, the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.[19]

Another 1996 revision required ongoing agency rulemaking review, revision, and reporting.[20] Under that law, as amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.[21] Biennially, the agency head must report the results and other required information to the President of the Senate, Speaker of the House of Representatives, JAPC, and "each appropriate standing committee of the Legislature" on October 1.[22]

*Limited Utility of s. 120.74, F.S., Reports*

Agencies as defined in the APA,[23] including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and state a finding of no undue economic impact on small businesses (a required subject of the report). For example, a 2009 report from a school district identified the following changes to the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.[24]

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.[25]

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.[26]

Educational units were exempted from the biennial reporting requirement in 2014.[27]

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to [the agency's] rules as a result of the review. . ."[28] One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes,

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[19] Chapter 96-159, s. 9(2), L.O.F.

[20] Chapter 96-399, s. 46, L.O.F, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapters 2006-82, s. 9, and 2008-149, s. 8, L.O.F.

[21] Identify and correct deficiencies; clarify and simply its rules; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S.

[22] Section 120.74(2), F.S.

[23] Section 120.52(1), F.S.

[24] School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009 (on file with the Rulemaking Oversight and Repeal Subcommittee).

[25] School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

[26] School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

[27] Section 2, ch. 2014-39, L.O.F.; codified as s. 120.74(5), F.S.

[28] Section 120.74(2), F.S.

including a brief explanation of the reason for the amendment or adoption.[29] In contrast, a different agency simply identified obsolete rules for repeal, without stating why the rules were obsolete, and listed a rule for amendment to update documents incorporated by reference, without identifying the documents so referenced.[30] Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.[31]

*Regulatory Plans*
In 2011, the reporting requirements were amended to require that each agency file an annual regulatory plan in addition to the biennial reports.[32] The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Effect of the Bill
The bill retains the requirement that agencies identify and proceed with rulemaking necessitated by changes in newly-enacted law, but revises the deadlines, method for compliance, and reporting requirements in the APA.

The bill replaces the biennial reporting with an expanded annual regulatory plan. The regulatory plan requires each agency to identify those laws enacted or amended during the previous 12 months that created or modified the duties or authority of the agency. The plan may exclude any law affecting all or most agencies, if the law is identified as such by letter to JAPC from the Governor or the Attorney General. The plan also must identify whether rulemaking is necessary to implement the newly-enacted provisions.

For each law identified in the regulatory plan as requiring rulemaking, the agency must state whether a notice of rule development has been published, and the date by which the agency expects to publish the notice of proposed rule.

The bill imposes specific deadlines for the agency to publish the Notice of Rule Development and Notice of Proposed Rule. Specifically, the bill requires agencies to publish a Notice of Rule Development by November 1 for each law identified in the regulatory plan for which rulemaking is necessary to implement.

The bill requires an agency to move forward with rulemaking by publishing a Notice of Proposed Rule by April 1 of the year after the submission of the regulatory plan. If the agency is unable to publish the notice by April 1, the agency may extend the deadline to the following October 1, which is the deadline for the next regulatory plan. The Notice of Extension must be published in the Florida Administrative Register (FAR) and reference the published Notice of Rule Development. If the agency needs additional time, the agency must re-list the law on the next regulatory plan. Re-listing the law on a subsequent regulatory plan further extends the deadline for the Notice of Proposed Rule.

If the agency states rulemaking is not necessary to implement the new law, the regulatory plan must contain a concise written explanation supporting that conclusion. An agency also is required to identify all other laws the agency expects to implement by rulemaking, except emergency rulemaking, before the following July 1. For each law listed, the agency must indicate whether the rulemaking is intended

[29] Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.
[30] Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.
[31] Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.
[32] Chapter 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

The regulatory plan must verify that the agency continuously reviews and revises its rules to maintain conformity with applicable law. The regulatory plan must be certified by both the agency head and the agency's primary lawyer. Copies of the certification will be delivered to JAPC and included with the agency's annual legislative budget request filed with the House of Representatives, Senate, and Executive Office of the Governor.

The agency is responsible for publishing its regulatory plan on its website or another state website established for publication of administrative law records. The agency must publish notice of publication in the FAR along with a hyperlink to the regulatory plan.

The bill further requires an agency to file with JAPC a certification of compliance with the publishing requirement for the Notice of Rule Development and for each Notice of Extension or regulatory plan correction filed. A copy of each Notice of Proposed Rule will continue to be delivered to JAPC.

By October 15 of each year:

- The Department of Business and Professional Regulation must file with JAPC a certification that it has reviewed the regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the department.
- The Department of Health must file with JAPC a certification that the department has reviewed the regulatory plan for each board established under s. 20.43(3), F.S.

A certification by the Department of Business and Professional Regulation or the Department of Health may relate to more than one board.

An agency is required to supplement its regulatory plan if a law enacted during a special session affects the agency's duties or authority. The supplement must be completed within 30 days after a bill becomes a law if the law is enacted before the next regular legislative session and the law modifies the agency's specifically legislated duties.

To ensure compliance with the law, the rulemaking authority of an agency that fails to comply with any of the following requirements of the bill is suspended until the agency completes the required action or until the end of the subsequent regular legislative session, whichever occurs first:

- By October 1, the agency must publish the annual regulatory plan on its website, deliver a copy to JAPC, and publish a notice in the FAR.
- The agency must publish any required Notice of Proposed Rule by April 1, or must file a Notice of Extension, which extends the period to the next October 1.

During the suspension, the agency may complete any rulemaking actions required by the revised statute, including publishing Notices of Rule Development and Notices of Proposed Rules, and may conduct any public hearings that were noticed prior to the period of suspension. The suspension does not authorize an agency to promulgate or apply a statement defined as a rule, unless the statement was filed for adoption prior to the suspension. The suspension tolls the time for filing any already-pending rules for adoption; time resumes running when the agency meets the statutory requirements to remove the suspension. An agency's authority to adopt emergency rules or rules necessary to comply with federal law would not be suspended.

Educational entities, such as school districts, are exempted entirely from the requirements in the bill.

## Retrospective Economic Review of Rules

Background

In November 2010, the Legislature enacted HB 1565 (2010)[33] overriding a gubernatorial veto. The law created a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.[34] The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the first year after the rule is implemented.[35] Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of $1 million in the aggregate within 5 years of going into effect.[36]

The requirements of chapter 2010-279, L.O.F., applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011 the Legislature passed CS/CS/CS/HB 993 & HB 7239, including a provision requiring a retrospective economic analysis of those existing rules.[37] All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)[38] were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identify existing rules likely to have significant economic impacts.[39] At the agency's discretion, the agency may submit the compliance economic reviews in two approximately equal groups: Group 1 reviews were to be published by December 1, 2012, and the remaining reviews in Group 2 were to be published by December 1, 2013.[40]

Concurrently with the development of HB 993 and HB 7239, the Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).[41] Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the bill exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring compliance economic reviews in 2011[42] and all final reviews by December 31, 2013.[43]

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[33] Chapter 2010-279, L.O.F.

[34] Section 120.541(3), F.S.

[35] Sections 120.54(3)(b)1. and 120.541(1)(b), F.S.

[36] Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

[37] Chapter 2011-225, s. 5, L.O.F, codified as s. 120.745, F.S.

[38] A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units. Section 120.81(1), F.S.

[39] Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

[40] Section 120.745(5), F.S.

[41] Executive Order 11-01, subsequently revised by Executive Order 11-72 and replaced by Executive Order 11-211.

[42] As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring compliance economic reviews (3,056). At https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html (last accessed March 24, 2015).

[43] Section 120.745(9), F.S.

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five[44] identified rules requiring compliance economic reviews.[45] Of the 161 compliance economic reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding $1 million over the 5 year period from July 1, 2011 to July 1, 2016.

Effect of the Bill
In December 2013, the retrospective economic reviews of all agency rules were completed with the publication of the required compliance economic reviews. Accordingly, the bill repeals s. 120.745, F.S., effective upon the bill becoming law.

**Your Voice Survey**

Background
As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,[46] respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period of July 1, 2011 through July 1, 2014, s. 120.7455, F.S.,[47] was enacted to provide certain limited protections from enforcement actions based on any response to the survey. Specifically, a person reporting or providing information solicited by the Legislature in conformity with the law is immune from any enforcement action or prosecution based on such reporting.[48] If a person was subject to a penalty in excess of the minimum provided by law or rule, and such person proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.[49]

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. However, the survey responses were of limited value. Many respondents voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 respondents directly addressed a particular agency rule, and of those, no more than 40 respondents provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

Effect of the Bill
The bill repeals s. 120.7455, F.S., effective upon the bill becoming law.

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[44] Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.
[45] As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring compliance economic reviews to be reported in Group 1 (161) and Group 2 (182).
[46] At http://www.surveymonkey.com/s/FloridaRegReformSurvey (last accessed March 24, 2015).
[47] Chapter 2011-225, s. 6, L.O.F.
[48] Section 120.7455(3), F.S. The protection also extends to the non-reporting of such information or the use of information provided in response to the survey.
[49] Section 120.7455(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising the deadline to propose rules implementing new laws.

Section 2: Amends s. 120.74, F.S., revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; providing for applicability; providing for suspension of an agency's rulemaking authority under certain circumstances.

Section 3: Repeals ss. 120.745 and 120.7455, F.S., relating to legislative review of agency rules in effect on or before a specified date and an Internet-based public survey of regulatory impacts, respectively; providing for rescission of the suspension of rulemaking authority under such repealed provisions.

Section 4: Provides an effective date of July 1, 2015, except as otherwise provided in this act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires agencies to publish in the FAR a notice identifying the date of publication along with a hyperlink to the regulatory plan, which has an associated cost. There is an increased workload on state agencies to adhere to the annual reporting requirements and action deadlines prescribed in the bill. The additional publication requirements and increased workload will have an insignificant fiscal impact on agencies and can be handled within existing resources. Regulatory plans have been published for the past three years without significant costs incurred.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking by any agency. The main analysis discusses particular changes to the accountability of agencies exercising rulemaking authority and to rulemaking to implement new laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; providing for applicability; providing for suspension of an agency's rulemaking authority under certain circumstances; repealing s. 120.745 F.S., relating to legislative review of agency rules in effect on or before a specified date; repealing s. 120.7455,F.S., relating to an Internet-based public survey of regulatory impacts; providing for rescission of the suspension of rulemaking authority under such repealed provisions; providing effective dates.

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

Section 1. Paragraph (b) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN

EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(5) and (6) ~~180 days after the effective date of the act, unless the act provides otherwise~~.

Section 2. Section 120.74, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.74, F.S., for present text.)

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare an implementation and rulemaking plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months that creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published

and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) that the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (8). If in a prior year a law was identified under this paragraph or under subparagraph (1)(a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency may identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency may

identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan shall include a certification executed on behalf of the agency by both the agency head or, if the agency head is a collegial body, the chair or equivalent presiding officer, and the agency general counsel or, if the agency does not have a general counsel, the individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Deliver by electronic communication to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice shall include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), each board established by s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and each board established by s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to the requirements of s. 216.023 and pursuant to s. 216.351, a copy of the most recent certification executed under paragraph (1)(d), clearly designated as such, shall be included as part of the agency's legislative budget request.

(4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's regulatory plan. A certification may relate to more than one board.

(b) For each board established under s. 20.43(3), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida

Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(7) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (5), upon filing a notice under subsection (6) of either a deadline extension or a regulatory plan correction, and upon the completion of an act that terminates a suspension under subsection (9). A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan

within 30 days after a bill becomes a law, if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement shall include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (5) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (6) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (6). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(9) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (6), the entire rulemaking authority delegated to the agency by the Legislature under any statute or law shall be suspended automatically as of

the due date of the required action and shall remain suspended until the date the agency completes the required act or until the end of the next regular session of the Legislature, whichever occurs first.

(a) During a period of suspension under this subsection, the agency has no authority to file rules for adoption under s. 120.54, but may complete any action required by this section and may conduct public hearings that were noticed before the period of suspension.

(b) A suspension under this subsection does not authorize an agency to promulgate or apply a statement defined as a rule under s. 120.52(16) unless the statement was filed for adoption under s. 120.54(3) before the suspension.

(c) A suspension under this subsection tolls the time requirements under s. 120.54 for filing a rule for adoption in a rulemaking proceeding initiated by the agency before the date of the suspension. The time requirements shall resume on the date the suspension ends.

(d) This subsection does not suspend the adoption of emergency rules under s. 120.54(4) or rulemaking necessary to ensure the state's compliance with federal law.

(10) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 3. Effective upon this act becoming a law:

(1) Sections 120.745 and 120.7455, Florida Statutes, are repealed.

(2) Any suspension of rulemaking authority under s. 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is rescinded. This subsection does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

(3) This section serves no other purpose and shall not be codified in the Florida Statutes.

Section 4. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

HB 7025

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7025 PCB RORS 15-02 Administrative Procedures
**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee, Richardson
**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7058

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee | 13 Y, 0 N | Stranburg | Rubottom |
| 1) State Affairs Committee | | Harrington | Camechis |

## SUMMARY ANALYSIS

The bill amends the rulemaking procedures of the Administrative Procedure Act to improve public notices and the preparation of statements of estimated regulatory costs (SERC) beginning in the period of rule development. The bill also revises the requirements for preparing a SERC to improve and standardize guidance for administrative agencies in preparing information necessary for decision makers and affected constituencies to understand the economic and policy impacts of proposed rules.

The bill amends the statutory rulemaking process by:

- Conforming the information required in notices of rule development to certain information required for notices of proposed rules.
- Requiring published notices of proposed rules to state whether the agency conducted a rule development workshop.
- Requiring an agency to make certain documents available by hyperlink on the agency website.
- Amending the requirements for rule development to include workshops and other public hearings for the development of information beneficial to the preparation of a SERC.
- Requiring agencies to ensure the availability of personnel responsible for preparing a SERC at rule development workshops, hearings, and public hearings on proposed rules.
- Creating six new factors agencies must consider when evaluating the impact of proposed rules on small businesses, presuming each of these factors to be adverse to small business.
- Clarifying present statutes on hearings, agency responses to submitted lower cost regulatory alternatives, and conforming other provisions to these changes.

The statutory requirements for preparing a SERC are revised by:

- Authorizing agencies to respond to a lower cost regulatory alternative by modifying a proposed rule to substantially reduce estimated regulatory costs, and, if so, requiring the agency to revise its SERC and include a summary of the revised SERC in subsequent rulemaking notices.
- Requiring agencies to provide the rules ombudsman with any revised SERC.
- Making publication of the SERC a mandatory element of the preparation of a SERC.
- Creating s. 120.541(5), F.S., extensively revising the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

The bill also provides that a petition to establish a community development district must include a statement on the prospective economic impact of a community development district, and not a SERC.

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Agency Rulemaking

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] The Administrative Procedure Act (APA) provides specific requirements agencies must follow in order to adopt rules.[2] One important aspect of the APA[3] is the emphasis on public notice and opportunity for participation in agency rulemaking.

With some exceptions,[4] required rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).[5] If the agency conducts public rule development workshops,[6] the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.[7]

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.[8] The publication of this notice triggers certain deadlines for the rulemaking process.[9] Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC) and the opportunity for anyone to provide the agency with information pertaining to the SERC or to propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.[10]

At a public rulemaking hearing agency staff must be available to explain the proposed rule and respond to public questions or comments. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.[11] If a person substantially affected by the proposed rule shows the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter

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[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] Section 120.54, F.S.
[3] Ch. 120, F.S.
[4] Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.
[5] Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1990).
[6] An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.
[7] Section 120.52(c), F.S.
[8] Section 120.54(3)(a)1., F.S.
[9] Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.
[10] Section 120.54(3)(a)1., F.S.
[11] Section 120.54(3)(c)1., F.S.

to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes the rulemaking proceeding resumes.[12]

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.[13] If the change increases the regulatory costs of the rule the agency must revise its SERC.[14]

Statement of Estimated Regulatory Costs (SERC)

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[15] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,[16] but are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;[17]
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than $200,000 in the first year after the rule is implemented;[18] or
- If a substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.[19]

Additionally, a SERC must be included in a petition for the creation of a community development filed with the Florida Land and Water Adjudicatory Commission.[20]

Each SERC at a minimum must contain the following elements:

- An economic analysis of the proposed rule's potential direct or indirect impacts,[21] including whether any of the following exceed an aggregate of $1,000,000 in the first 5 years after implementing the rule:
  - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;[22]
  - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;[23] or
  - Any likely increase in regulatory costs (including transactional costs). [24]
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.[25]
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.[26]
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur to comply with the rule.[27]

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[12] Section 120.54(3)(c)2., F.S.
[13] Section 120.54(3)(d)1., F.S.
[14] Section 120.541(1)(c), F.S.
[15] Section 120.541(2), F.S. Beginning in 1975, the APA required agencies to estimate the economic impact of proposed rules or explain why such an estimate could not be prepared. Ch. 75-191, s. 3, LOF, codified at 120.54(1), Fla. Stat. (1975).
[16] Section 120.54(3)(b)1., F.S.
[17] Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.
[18] Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.
[19] Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.
[20] Section 190.005(1), F.S.
[21] Section 120.541(2)(a), F.S.
[22] Section 120.541(2)(a)1., F.S.
[23] Section 120.541(2)(a)2., F.S.
[24] Section 120.541(2)(a)3., F.S.
[25] Section 120.541(2)(b), F.S.
[26] Section 120.541(2)(c), F.S.

- An analysis of the impact of the rule on small businesses, including the agency's explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.[28]
- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.[29]

Additional information may be included if the agency determines such would be useful.[30] The agency's failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative[31] is a material failure to follow the APA rulemaking requirements.[32] Consequently, if challenged the rule could be found to be an invalid exercise of delegated legislative authority.[33] Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.[34]

The specific requirements of s. 120.541, F.S., were adopted in 1996 as part of the comprehensive revision of the APA.[35] The revisions resulted from the Final Report of the Commission appointed by the Governor to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.[36] The Commission found the purpose for economic impact statements was to assist both the government and the public to understand the potential financial impacts of a rule before adoption but "[t]he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective."[37]

Although the Commission recommended a number of revisions to improve the evaluation of costs, which serve as the basis for the present statute, these recommendations provided little guidance on the

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[27] Section 120.541(2)(d), F.S. The definition of "transactional costs" is discussed later in this analysis.

[28] Section 120.541(2)(e), F.S. This statute incorporates the definitions of "small city" and "small county" in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of "small business" in s. 288.703, F.S. *Compare*, s. 120.54(3)(b)2., F.S., which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to more adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies 5 methods agencies must consider to reduce the rule's impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide JAPC a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

[29] Section 120.541(2)(g), F.S.

[30] Section 120.541(2)(f), F.S.

[31] The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at http://www.doah.state.fl.us/ALJ/searchDOAH/ (accessed 1/28/2014).

[32] Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

[33] Section 120.52(8)(a), F.S.

[34] Section 120.52(8)(f), F.S. This type of challenge must be to the agency's rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

[35] Ch. 96-159, s. 11, LOF.

[36] *Final Report of the Governor's Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at http://japc.state.fl.us/research.cfm (accessed 3/24/2015).

[37] *Final Report of the Governor's APA Review Commission*, supra at 31.

actual cost components relevant to evaluating the potential impact of a proposed rule.[38] For example, neither a definition nor examples of "regulatory costs" are found in the APA although the concept is important to an agency's economic analysis. "Transactional costs" are defined as direct costs of compliance, readily ascertainable based on standard business practices, including:

- Filing fees;
- Costs to obtain a license;
- Costs of equipment installed or used for rule compliance;
- Costs of procedures required for compliance;
- Additional operating costs;
- Costs for monitoring and reporting; and
- Any other necessary costs of compliance.[39]

The statute does not provide guidance or reference on how agencies are to identify and apply standard business practices in the development of required SERCs. As a result, some agencies with access to, and familiarity with, cost impact data from entities affected by specific rules provide comprehensive analyses of such impacts in SERCs.[40] Other agencies, less familiar with costs to individuals and entities to conduct the regulated activities and comply with specific rules, prepare SERCs which do not reflect the full impact of particular rules.[41]

**Effect of Proposed Changes**

The bill amends the rulemaking procedures of the APA to improve public notices and the preparation of SERCs, beginning in the period of rule development. Agencies are provided specific factors to consider when evaluating the overall impact on small businesses of a proposed rule, amendment, or repeal. The requirement for an agency conducting a public workshop or hearing to make available certain personnel is expanded to include those responsible for preparing the SERC and responding to lower cost regulatory alternatives. The statute controlling the actual preparation of SERCs is revised to clarify agency responsibilities for public notice and responding to lower cost regulatory alternatives. A new subsection provides agencies flexibility for obtaining necessary data and increases legislative guidance for evaluating cost impacts by identifying specific cost and economic factors all agencies must consider when preparing a SERC.

Section 120.54(2): Rule Development

The bill conforms the requirement for information in a notice of rule development[42] to that required for a notice of proposed rule.[43] In notices of rule development, agencies will be required to provide citations

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[38] *Final Report of the Governor's APA Review Commission*, supra at 32.

[39] Section 120.541(2)(d), F.S.

[40] Presentations of Curt Kiser, General Counsel, and Bill McNulty, Economic Analyst, of the Public Service Commission, at scheduled meeting of Rulemaking Oversight & Repeal Subcommittee on November 5, 2013, at http://myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2013111059&committeeID=2727 (accessed 3/23/2015).

[41] Presentation of Dept. of Elder Affairs at scheduled meeting of RO&RS on March 27, 2013. *See*, 3-27-2013 Subcommittee Action Packet, 45-52. The agency was revising several rules in Ch. 58A-5, F.A.C., including increased training and testing requirements for administrators, managers, and staff of assisted living facilities (ALF). The SERC prepared by the agency initially concluded the proposed rules would increase regulatory costs by less than $1,000,000 over the first five years of implementation. However, as adduced by the Subcommittee during the agency's presentation, a number of cost factors were not considered in preparing the SERC, including the time and expense for testing to *all* applicants (not merely those passing the test), increased training and labor costs to ALFs, and even the costs of implementation and operation to the agency. The SERC also did not account for the delayed effective dates for some of the rules, resulting in the agency measuring cost impacts for the first 5 years from the initial effective date of some rules rather than a full 5 years for each rule. When questioned on these assumptions, the agency conceded the SERC should have indicated an overall cost impact exceeding $1,000,000 for the first 5 years of full implementation of all the subject rules. An audio recording of the meeting is at http://myfloridahouse.gov/FileStores/AdHoc/PodCasts/03_27_2013/Rulemaking_Oversight_Repeal_2013_03_27.mp3 (accessed 3/23/2015).

[42] Section 120.54(2)(a), F.S.

[43] Section 120.54(3)(a)1., F.S.

to the grant of rulemaking authority and the specific law(s) being implemented under which the proposed rule will be developed[44] and:

- Information on how the public may comment on the proposed rule development and provide the agency with information on regulatory costs which may result from a proposed rule; and
- How the public may, without cost, access online a draft of the rule being developed (when available).

Agencies conducting public rule development workshops[45] will be required to ensure the attendance at such workshops not only of the people responsible for preparing the proposed rule but also those responsible for preparing the SERC to receive public input, explain the agency's proposal, and respond to public questions or comments. The bill deletes a sentence stating an agency's failure to provide the agency head's written explanation as to why a requested workshop was not necessary "may be a material error" in the rulemaking procedure because the statement is redundant of s. 120.56(1)(c), F.S.

The bill makes technical revisions conforming the rule development statute to these changes.

Section 120.54(3): Rule Adoption

The bill makes several changes to the requirement for notices of proposed rules:[46]

- Additional information must be included in the published notice of proposed rule:[47]
  - The notice must state whether the agency held a public workshop for rule development. If not, whether the agency received a written request to conduct a workshop.
  - If the agency did not conduct a workshop, the agency must provide a written explanation as to why the workshop was unnecessary.
  - The required summary of the SERC (if one is prepared) must include a hyperlink to a copy of the SERC on the agency's website.
- When an agency must deliver additional copies of the published notice of proposed rule to those who requested advance notice of the agency's proceedings,[48] agencies will have the option of providing such copies by mail or electronic delivery.
- In lieu of filing physical copies of a required statement or copy of additional material incorporated by reference in the proposed rule,[49] the agency may provide the Joint Administrative Procedures Committee (JAPC)[50] access to a copy of these materials by hyperlink to a webpage.

The guidance and direction for agencies to consider the impact on small businesses of proposed rules[51] is revised. A rule will be presumed to have an adverse impact, and a SERC will be required, if for any small business:

- The owner or other specified person must complete any education, training or testing, is likely to expend 10 or more hours, or must hire a professional, in order to understand and comply with the rule in the first year.
- Taxes or fees assessed on transactions are likely to increase by at least $500 in the aggregate in one year due to the rule.
- Prices charged for goods and services are restricted or likely to increase due to the rule.
- Compliance with the rule will require specially trained, licensed, or tested employees.

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[44] Staff of JAPC has suggested conforming the notice of rule development to the present requirements for notices of proposed rule. Adding statutory citations at the initiation of rulemaking will helpfully define the scope of rule development. It therefore can guide and assist public participation.

[45] Section 120.54(2)(c), F.S.

[46] Section 120.54(3)(a), F.S.

[47] Section 120.54(3)(a)1., F.S.

[48] Section 120.54(3)(a)3., F.S.

[49] Section 120.54(1)(i)1., 2., 3., F.S.

[50] Section 120.54(3)(a)4., F.S.

[51] Section 120.54(3)(b)2.a., F.S. The bill inserts the new provisions as a revised 120.54(3)(b)2.a. , renumbering existing (3)(b)2.a. as (3)(b)2.b.

- Operating costs are expected to increase by $1,000 annually because of the rule.
- Compliance requires capital expenditures of at least $1,000.

Consistent with the revised requirements for rule development workshops, agencies will be required to ensure the availability at hearings on proposed rules both of those responsible for preparing the proposed rule and those responsible for preparing the SERC. Those made available must be able to explain the proposed rule and the SERC and respond to public questions or comments about the proposed rule, SERC, and the agency's decision whether to adopt offered lower cost regulatory alternatives.

An agency deciding to commence a requested separate, more formal proceeding[52] will be required to publish notice of that proceeding in the F.A.R. The bill expressly tolls all timelines under the standard rulemaking procedures during the suspension of the rulemaking proceeding until the date following the conclusion of the separate proceeding.

An agency publishing a notice of change to a proposed rule will be required to include one of the following:

- A summary of the SERC prepared as a consequence of the change to the proposed rule; or
- A summary of the revision to the SERC required by s. 120.541(1)(c), F.S.; or
- A statement the proposed rule as changed does not require preparation of a SERC.

In addition to technical changes conforming other statutory provisions to these changes, the bill requires agencies to make a SERC available to the public at a readily accessible page on the agency's website.[53]

Section 120.541: Statements of Estimated Regulatory Costs

The bill expressly provides for the submission of lower cost regulatory alternatives in response to any non-technical noticed change to the proposed rule. Submissions of lower cost regulatory alternatives responding to notices of change will only be in good faith if the person submitting the alternative notes the reason for believing the change creates increased regulatory costs or an adverse effect on small businesses that was not created by the original proposed rule.

An agency receiving a proposed lower cost regulatory alternative will now have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the proposal or stating its reasons for rejecting the alternative in favor of the proposed rule. If the agency modifies the proposed rule, the agency also must revise the SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a lower cost regulatory alternative, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be served on the rules ombudsman[54] in addition to the party submitting the lower cost regulatory alternative and JAPC. The revised SERC must be published in the same manner as the original SERC.

The bill significantly revises the guidance on which agencies must rely when preparing SERCs. The definition and use of "transactional" costs is replaced with more specific terms.

The required economic analysis must still analyze the proposed rule's impact on regulatory costs, which will include all costs and impacts estimated in the SERC. The agency must estimate the number of small businesses and other entities required to comply with the proposed rule, in addition to individuals. The SERC must estimate the costs of compliance by individuals and entities.

[52] Section 120.54(3)(c)2., F.S.
[53] Section 120.54(3)(e)2., F.S.
[54] The rule ombudsman is appointed by the Governor and located in the Executive Office of the Governor. Section 288.7015, F.S.

The bill requires any of the following documents prepared by or on behalf of an agency to be publicly available on the agency's website, or on another state website established for publication of administrative law records, until the rule to which the document applies is withdrawn or repealed, or until the rule is amended accompanied by the preparation of a new SERC:

- A SERC prepared with respect to a rule proposed or filed for adoption after November 16, 2010;
- A revision of a SERC prepared with respect to a rule proposed or filed for adoption after November 16, 2010;
- A compliance economic review published pursuant to s. 120.745(5), F.S.; or
- A report on an economic estimate of regulatory costs and economic impact published pursuant to s. 120.745(9)(b), F.S.

The bill creates s. 120.541(5)(a), F.S., requiring agencies to estimate all impacts and costs for the first five years after full implementation of all provisions of the rule, not simply from the effective date of the proposed rule.

The bill creates s. 120.541(5)(b), F.S. It requires estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule and provides specific guidance for agencies to consider, such as:

- Increased consumer prices;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule; and
- Capital costs incurred to comply with the proposed rule.

The bill creates s. 120.541(5)(c), F.S., providing agencies with specific guidance and flexibility for obtaining information and data necessary to prepare economic analyses. Newly created s. 120.541(5)(d), F.S., directs agencies to consider all direct and indirect costs of rule compliance and provides 18 specific types of costs as examples, including:

- Filing fees;
- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, information, and management systems;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead.

Section 190.005: Community Development Districts

The bill provides that a petition for the establishment of a community development district filed with the Florida Land and Water Adjudicatory Commission need not contain a SERC, but rather must contain a statement explaining the prospective economic impact of the establishment of the proposed district.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising rulemaking notice, workshop, and hearing requirements, updating publication requirements to include internet access to certain documents, creating specific guidance for agency evaluation of prospective adverse impacts on small businesses by new rules, clarifies requirements for responding to lower cost regulatory alternatives, makes necessary conforming changes.

Section 2: Amends s. 120.541, F.S., revising and expanding agency responsibilities in preparing SERCs and responding to submitted lower cost regulatory alternatives, requiring provision of revised SERCs to the rules ombudsman, creating s. 120.541(5), F.S., extensively revising the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

Section 3: Amends s. 190.005, F.S., requiring a petition to establish a community development district to include a statement of prospective economic impact of the establishment of a proposed district

Section 4: Provides 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 may have an indeterminate fiscal impact on state government. *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to provide a better estimation of economic impacts of agency rules, a better opportunity of local government and private entities to participate in rulemaking and in estimating regulatory costs with the clear intent to better facilitate the selection of lower cost alternatives. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to their becoming effective.

D. FISCAL COMMENTS:

State agencies currently are required to comply with notice, publication, and hearing requirements for rulemaking and with the requirements for preparing SERCs. The bill adds to these requirements. Compliance with these additional requirements may require agencies to devote more resources to rulemaking. The bill also specifically provides for electronic and internet publishing of many documents that must currently be delivered in paper form. This might result in cost savings for some agencies.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Website Posting of a SERC
The bill requires an agency to make publicly available on a website a SERC, revised SERC, compliance economic review, or report on an economic estimate or regulatory costs and economic impact, until the rule is withdrawn or repealed, or until the rule is amended with preparation of a new SERC. It is unclear what the effect of this requirement is for a proposed rule that is revised to no longer require a SERC or other economic impact report.

Other Comments: Economic Impact on Economic Growth, Employment, and Small Businesses
The bill provides that an agency evaluating the potential impact of a rule on economic growth, employment, private sector investment, and small businesses must consider factors such as increased customer charges for goods and services, decreased market value of goods and services, increased costs resulting from the purchase of substitute or alternative products or services, and value of time required for understanding and compliance of the rule. It is unclear if an agency would have the ability to develop meaningful estimates of such factors without access to reliable data, which may not be available.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its meeting on February 10, 2015, the Rulemaking Oversight & Repeal Subcommittee adopted two amendments to the draft PCB and approved PCB RORS 15-02 as amended.

- Amendment 1 made technical changes, removing the word "proposed" before the phrase "rule for adoption" in three places in the PCB.
- Amendment 2 made a change to publication of materials incorporated by reference in a rule. Many rules incorporate significant manuals or standards documents, in addition to numerous forms, that should be subject to review during public scrutiny of any proposed rules. Presently, the APA does not require online access to such materials until the rule is filed for adoption. The amendment requires each notice of proposed rule to include a hyperlink for access to any materials incorporated by reference in the proposed rule unless the materials cannot be published online, as determined under s. 120.54(1)(i)3b, F.S. If materials cannot be published online, the agency must provide where and how such materials are available for access as under s. 120.54(1)(i)3b, F.S.

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising requirements for the content of notices of rule development; revising the scope of public workshops to include information gathering for the preparation of statements of estimated regulatory costs; revising requirements for notices of proposed rules; authorizing electronic delivery of notices to persons who have requested advance notice of agency rulemaking proceedings; requiring certain materials incorporated by reference to be accessible online at time of notice of proposed rule; revising requirements for an agency's filing of specified information with the Administrative Procedures Committee; creating a presumption of adverse impact on small business in specified circumstances; requiring certain agency personnel to attend public hearings on proposed rules; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; tolling rulemaking deadlines during such separate proceedings; revising requirements for the contents of a notice of change; amending s. 120.541, F.S.; revising requirements for substantially affected persons to submit proposals for lower cost regulatory alternatives to a proposed rule following a notice of change; revising requirements for an agency's

consideration of such lower cost regulatory alternatives; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to such lower cost regulatory alternatives; requiring the agency to provide specified documents on a website under specific circumstances; deleting definition of "transactional costs"; providing additional requirements for the calculation of estimated regulatory costs; amending s. 190.005, F.S., relating to the establishment of community development districts; requiring a petition to include a statement explaining the prospective economic impact of the establishment of a proposed district; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.—

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a

proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority pursuant to which the rule is proposed and the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted by the proposed rule ~~specific legal authority for the proposed rule~~, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, or access online, a copy of any preliminary draft, when ~~if~~ available. The notice shall also include a statement of how a person may submit comments to the proposal and provide information regarding the potential regulatory costs.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory costs. If requested in writing by an affected person, an agency must hold public workshops, including workshops in various regions of the state

or the agency's service area, for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory cost ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. ~~The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c).~~ When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed and the statement of estimated regulatory costs. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development, including the preparation of any statement of estimated regulatory costs. Notice of a rule development workshop shall be by publication in the Florida Administrative Register not less than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the

use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule and to develop information necessary to prepare a statement of estimated regulatory costs, when applicable.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is

intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) Notices.—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a statement as to whether the agency held a public workshop for the purpose of development of the proposed rule, and if not, whether a workshop was requested in writing. If a rule development workshop was not held, the notice must include a copy of the written explanation from the agency head as to why a workshop was unnecessary. The notice must include a summary of the agency's statement of the estimated regulatory costs, including an electronic hyperlink to a copy of the statement of estimated regulatory costs on the agency's website, if a statement ~~one~~ has been prepared, based on the factors set forth in s. 120.541(2); a statement that any person who wishes to provide the agency with information

regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice. At the time of publication of the notice, the agency must make available by electronic hyperlink all materials incorporated by reference in the proposed rule. The notice shall include the electronic hyperlink for access to materials incorporated by reference. If the agency determines that posting would constitute a violation of federal copyright law, the notice must include the statement required in s. 120.54(1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before ~~prior to~~ such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1. In lieu of filing a required statement or copy with the committee for each such rule, the agency may file with the committee information providing an electronic hyperlink to a readily accessible copy of the required statement or copy.

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of

estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small business is presumed if, for any small business:

(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply, or is likely to either expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required;

(V) Operating costs are expected to increase by at least $1,000 annually; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management

practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.~~b.~~(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a

copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) Hearings.—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs ~~staff~~ are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, and the agency's decision whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of

the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date that the notice of convening a separate proceeding is published and resuming on the day immediately after conclusion of the separate proceeding.

(d) Modification or withdrawal of proposed rules.—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the

proposed rule has not been changed from the proposed rule as previously filed with the committee, or contains only technical changes that do not affect the substance of the rule, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days before ~~prior to~~ filing the rule for adoption. The notice of change must include either a summary of any statement of estimated regulatory costs prepared as a consequence of the change, a

summary of any revision of the statement of estimated regulatory costs required by s. 120.541(1)(c), or a statement that the proposed rule as changed does not require preparation of a statement of estimated regulatory costs under paragraph (b) and s. 120.541(1)(b). This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to

withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date.—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days

after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have

been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later

date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

Section 2. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice <u>of proposed rule</u> required under s. 120.54(3)(a), <u>or of a notice of change under s. 120.54(3)(d)1.,</u> a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. <u>If submitted after a notice of change, a proposal is deemed to be made in good faith only if the person reasonably</u>

believes and the proposal states the person's reasons for believing that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small business that was not created by the previous proposal. If ~~such~~ a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to substantially reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency shall ~~or~~ provide a statement of the reasons for rejecting the alternative proposal in favor of the proposed or modified rule.

(b) If a proposed rule will have an adverse impact on small business as set forth in s. 120.54(3)(b) or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if

the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(h) Any of the following documents prepared by or on behalf of an agency shall be publicly available on the agency's website, or on another state website established for publication of administrative law records, until the rule to which the document applies is withdrawn or repealed, or until the rule is amended accompanied by the preparation of a new statement of estimated regulatory costs:

1. A statement of estimated regulatory costs prepared with respect to a rule proposed or filed for adoption after November 16, 2010;

2. A revision of a statement of estimated regulatory costs prepared with respect to a rule proposed or filed for adoption after November 16, 2010;

3. A compliance economic review published pursuant to s. 120.745(5); or

4. A report on an economic estimate of regulatory costs and economic impact published pursuant to s. 120.745(9)(b).

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of

implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) ~~In the statement or revised statement, whichever applies,~~ A description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(5)(a) For purposes of subsections (2) and (3), impacts and costs incurred within 5 years after implementation of the rule shall include the applicable costs and impacts estimated to be incurred within the first 5 years after the effective date of the rule. However, if any provisions of the rule are not fully implemented and enforceable upon the effective date of the rule, the impacts and costs must be adjusted to include any additional costs and impacts estimated to be incurred within 5 years after the implementation and enforcement of the provisions of the rule that were not fully implemented upon the effective date of the rule.

(b) In evaluating the impacts described in paragraphs

(2)(a) and (2)(e), an agency shall include good faith estimates of market impacts likely to result from compliance with the rule, including:

1. Increased customer charges for goods and services.

2. Decreased market value of goods and services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative products or services.

4. The reasonable value of time to be expended by owners, officers, operators, and managers to understand and comply, including, but not limited to, time expended to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman, the agency head's appointing authority, or interested persons.

(c) In estimating the information required in paragraphs (2)(b)-(e), the agency may use reasonably applicable surveys of individuals, businesses, business organizations and representatives, cities, and counties to collect data helpful to estimate the costs and impacts. The agency shall also solicit helpful information in each notice related to the proposed rule. The rules ombudsman and the committee may recommend survey instruments and methods to assist agencies in administering this section. Such recommendations and agency decisions regarding surveys and methods do not constitute rules or agency actions under this chapter.

(d) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the rule that are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Obtaining a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information and management systems, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries and benefits.

9. Materials and supplies.

10. Capital expenditures including financing costs.

11. Professional and technical services, including contracted services necessary to implement and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman, the committee, or any interested person, business organization, or business representative.

Section 3. Paragraph (a) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the Florida Land and Water Adjudicatory Commission. The petition shall contain:

1. A metes and bounds description of the external boundaries of the district. Any real property within the external boundaries of the district which is to be excluded from the district shall be specifically described, and the last known address of all owners of such real property shall be listed. The petition shall also address the impact of the proposed district on any real property within the external boundaries of the

district which is to be excluded from the district.

2. The written consent to the establishment of the district by all landowners whose real property is to be included in the district or documentation demonstrating that the petitioner has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the district, and when real property to be included in the district is owned by a governmental entity and subject to a ground lease as described in s. 190.003(14), the written consent by such governmental entity.

3. A designation of five persons to be the initial members of the board of supervisors, who shall serve in that office until replaced by elected members as provided in s. 190.006.

4. The proposed name of the district.

5. A map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence.

6. Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services. These estimates shall be submitted in good faith but are not binding and may be subject to change.

7. A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan of

which all mandatory elements have been adopted by the applicable general-purpose local government in compliance with the Community Planning Act.

8. A statement explaining the prospective economic impact of establishment of the proposed district ~~of estimated regulatory costs in accordance with the requirements of s. 120.541~~.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7081 PCB RORS 15-03 Ratification of Rules/Minimum Flows & Levels and Recovery & Prevention Strategies/DEP
**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee, Beshears
**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7062

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee | 11 Y, 0 N | Rubottom | Rubottom |
| 1) State Affairs Committee | | Moore, R. | Camechis |

## SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) or the five water management districts (WMDs) are required to establish minimum flows for surface watercourses and minimum levels for groundwater and surface waters within each district. "Minimum flow" is the limit at which further water withdrawals from a given watercourse would significantly harm the water resources or ecology of the area. "Minimum level" is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area.

For waterbodies that are below their minimum flows and levels (MFLs) or are projected to fall below them within 20 years, the WMDs are required to implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing MFL from falling below the established MFL. The recovery or prevention strategy must include phasing or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals.

In June 2013, the Suwannee River Water Management District (SRWMD) governing board requested that DEP adopt MFLs it proposed for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs. The decision was based on the technical work conducted for the proposed MFLs by SRWMD staff, and the potential for cross-basin impacts originating outside of the SRWMD. SRWMD staff had also assessed the streamflows observed in the recent historical record and recent trends in the flow regime, and determined that a recovery strategy was required.

On March 7, 2014, DEP proposed Rule 62-42.300, F.A.C., establishing MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs, as well as regulatory flow recovery provisions. The proposed rule was estimated to have an economic impact in excess of $1 million over 5 years. If an agency rule meets that economic threshold, current law requires legislative ratification of the rule before it can take effect. However, an agency rule may not be ratified by the Legislature until it has been adopted by the agency. On April 8, 2014, the DEP filed a Notice of Change modifying the proposed rule. A challenge to the proposed rule was filed in the Department of Administrative Hearings, suspending rule adoption until after adjournment of the 2014 Regular Session of the Legislature. Because it was critical, according to DEP, for the rule to take effect as soon as possible, the Legislature passed HB 7171 (2014) which exempted the proposed rule from the ratification requirement.

The bill satisfies the legislative ratification requirement based on the rule's economic and regulatory cost impact. The bill expressly states that it serves no purpose other than satisfying the ratification requirement and that it will not be codified in the Florida Statutes.

The bill does not appear to have a fiscal impact on state government. According to DEP's Statement of Estimated Regulatory Costs (SERC), implementation of the rule if ratified will result in a negative fiscal impact of $300,000 on the SRWMD. The bill itself does not have a direct fiscal impact on the private sector; however, the substantive policy of the rule is expected to have an economic impact on the private sector. Those impacts are analyzed in DEP's SERC for the rule. In summary, the SERC estimates that the rule will have a negative fiscal impact of $3 million over a five-year timeframe on agricultural users that are required to eliminate or reduce the impact of new proposed withdrawal quantities on the MFLs. (See Fiscal Analysis Section).

The rule has an effective date upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

*Consumptive Use Permits*

For water uses other than private wells for domestic use, the statutes authorize the Department of Environmental Protection (DEP) and the water management districts (WMDs) to require any person seeking to use "waters in the state"[1] to obtain a consumptive use permit (CUP).[2] A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area.[3] To obtain a CUP, an applicant must establish that the proposed use of water satisfies a statutory test, commonly referred to as "the three-prong test."[4] Specifically, the proposed water use:

1. Must be a reasonable-beneficial use;[5]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.

*Minimum Flows and Levels (MFLs)*

DEP or the WMDs are required to establish minimum flows for surface watercourses and minimum levels for groundwater and surface waters within each WMD.[6] "Minimum flow" is the limit at which further water withdrawals from a given watercourse would significantly harm the water resources or ecology of the area.[7] "Minimum level" is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area.[8]

Section 373.042(2), F.S., requires each WMD to submit annually to DEP for review and approval of a priority list and schedule for the establishment of MFLs for surface watercourses, aquifers, and surface waters within the WMD. The priority list and schedule must identify those waterbodies for which the WMD will voluntarily undertake independent scientific peer review.

In 2003, the Legislature passed SB 244, which required the priority list and schedule to also include:

- Any reservations proposed by the WMD to be established under s. 373.223(4), F.S.;[9] and

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[1] Section 373.019(22), F.S., defines "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

[2] Section 373.219, F.S.

[3] Section 373.219, F.S.

[4] Section 373.223, F.S.

[5] Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

[6] Section 373.042(1), F.S.

[7] Section 373.042(1)(a), F.S.

[8] Section 373.042(1)(b), F.S.

[9] Section 373.223(4), F.S., provides that the WMD or DEP can reserve from use by permit applicants water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. These reservations must be subject to periodic review and revision in light of changed conditions. However, all presently existing legal uses of water must be protected so long as such use is not contrary to the public interest.

- Those listed waterbodies that have the potential to be affected by withdrawals in an adjacent WMD for which the DEP's adoption of a reservation or MFL may be appropriate.[10]

The WMDs use science that includes a variety of the best available information including meteorological, hydrological, and ecological data that typically includes a historical range of drought and flood conditions to establish scientifically the point beyond which additional withdrawals would cause significant harm.[11] Usually, a WMD selects a peer review committee to evaluate the scientific principles and methods used to establish MFLs. Once an MFL is calculated, it is adopted by rule of the WMD and implemented by the WMD.[12] However, in instances where DEP is setting an MFL, for example, when a MFL is being set for a waterbody affected by withdrawals between WMD boundaries, a WMD is required to provide DEP with technical information and staff support for the development of a reservation, MFL, or recovery or prevention strategy to be adopted by DEP by rule.[13] Furthermore, a WMD is required to apply any reservation, MFL, or recovery or prevention strategy adopted by DEP by rule without the WMD's adoption by rule of a reservation, MFL, or recovery or prevention strategy.[14]

For a waterbody that is below an MFL or is projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing MFL from falling below the established MFL.[15] The recovery or prevention strategy must include phasing or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses,[16] including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals.[17]

*Lower Santa Fe and Ichetucknee Rivers and Associated Springs*

The Ichetucknee River and associated springs are part of the Ichetucknee Springs State Park. The park is a high quality natural area that is partly developed and whose heavy public use is highly regulated in order to minimize damage to the environment.[18] The Ichetucknee River has 11 springs that include one first magnitude spring,[19] seven second magnitude springs,[20] two third magnitude springs,[21] and one whose magnitude is unknown. A list of these springs can be found in Appendix A at the end of this analysis. The most northern spring, Ichetucknee Head Spring, forms the head of the river.[22]

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[10] Chapter 2013-229, Laws of Fla.
[11] Minimum Flows and Levels Fact Sheet: Lower Santa Fe and Ichetucknee Rivers and Priority Springs Protecting Water Resources from Significant Harm. *See* Suwannee River Water Management District's website, available at http://www.mysuwanneeriver.com/Search/Results?searchPhrase=MFL+fact+sheet&page=1&perPage=10 (accessed March 24, 2015).
[12] Central Florida Water Initiative website; available at http://cfwiwater.com/MFLs.htnl (accessed March 24, 2015).
[13] Section 373.042(4), F.S.
[14] *Id.*
[15] Section 373.0421(2), F.S.
[16] Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[17] Section 373.0421(2), F.S.
[18] Florida Geological Survey, Bulletin No. 66, Springs of Florida, DEP; available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (accessed March 24, 2015).
[19] First magnitude springs discharge 64.6 million gallons of water per day (MGD) or more.
[20] Second magnitude springs discharge 6.46 to 64.6 MGD.
[21] Third magnitude springs discharge 0.0646 to 6.46 MGD.
[22] Florida Geological Survey, Bulletin No.66, Springs of Florida, DEP; available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (accessed March 24, 2015).

The Ichetucknee River discharges into the Santa Fe River.[23] O'Leno State Park is located on the Santa Fe River and is also very popular due to the many springs on the Santa Fe River. The Santa Fe River has 67 springs that include 10 first magnitude springs, 23 second magnitude springs, 20 third magnitude springs, 8 fourth magnitude springs,[24] and 6 whose magnitude are unknown. A list of these springs can be found in Appendix A at the end of this analysis.

The following table shows the park attendance for each state park for the last five fiscal years:

| | FY 2008/2009 | FY 2009/2010 | FY 2010/2011 | FY 2011/2012 | FY 2012/2013 |
|---|---|---|---|---|---|
| **O'Leno** | 63,625 | 58,586 | 63,023 | 63,035 | 71,429 |
| **Ichetucknee** | 161,990 | 184,151 | 204,586 | 148,213 | 135,923 |

*Proposed MFL Rules for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs*

The Lower Santa Fe and Ichetucknee Rivers are water bodies that have the potential to be affected by withdrawals in an adjacent WMD for which the DEP adoption of a reservation or MFL is required pursuant to s. 373.042(2), F.S. Consequently, and pursuant to s. 373.042(4), F.S., the Suwannee River WMD (SRWMD) governing board requested that DEP adopt MFLs it proposed for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs in June, 2013. The decision to make the request was based on the technical work conducted for the proposed MFLs by SRWMD staff and the potential for cross-basin impacts.[25] SRWMD staff had also assessed the streamflows observed in the recent historical record and recent trends in the flow regime, and determined that a recovery strategy was required.[26]

The MFL science, as described above in the MFL section, shows that the Lower Santa Fe River and its associated priority springs are in "recovery," meaning that they have fallen below their proposed MFL.[27] The flow is 17 cubic feet per second (CFS), or 11 MGD, below the proposed MFL at the river gage near Fort White. The MFL science shows that the Ichetucknee River and its associated priority springs are also in "recovery." The flow is 3 CFS or 2 MGD below the proposed MFL at the river gage located at the US 27 Bridge.

On March 7, 2014, DEP proposed rules 62-42.100 and 62-42.200, F.A.C., providing the scope and definitions for DEP-adopted MFLs. DEP also proposed rule 62-42.300, F.A.C., establishing MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs, as well as regulatory flow recovery provisions. The rules will apply to the SRWMD and the St. Johns River WMD (SJRWMD), allowing both WMDs to apply the MFLs and the associated regulatory strategy, resulting in a streamlined rulemaking process.[28]

Proposed rule 62-42.300, F.A.C., also adopts and incorporates by reference a document entitled "Supplemental Regulatory Measures," which contains regulatory provisions for the MFLs proposed for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs.[29] The proposed rule will apply to renewal and new CUP applications for withdrawals within the SRWMD and Planning Region 1

[23] Id.
[24] Fourth magnitude springs discharge 448 gallons of water per minute.
[25] DEP Statement of Estimated Regulatory Costs; available at http://www.dep.state.fl.us/water/waterpolicy/mflrulemaking.htm (accessed March 24, 2015).
[26] Id.
[27] The information in this paragraph was obtained from the *Minimum Flows and Levels Fact Sheet: Lower Santa Fe and Ichetucknee Rivers and Priority Springs Protecting Water Resources from Significant Harm. See* Suwannee River Water Management District's website, available at http://www.mysuwanneeriver.com/Search/Results?searchPhrase=MFL+fact+sheet&page=1&perPage=10 (accessed March 24, 2015).
[28] DEP MFL Rulemaking website, (accessed March 24, 2015).
[29] Supplemental Regulatory Measures, available at https://www.flrules.org/Gateway/reference.asp?No=Ref-03947 (accessed March 24, 2015).

of the SJRWMD.[30] Only those applications proposing new or additional withdrawal quantities that impact the Lower Santa Fe and Ichetucknee Rivers and Priority Springs MFLs will be subject to additional regulatory costs as a result of the proposed rule. These applications will be required to eliminate or reduce the impact of the new proposed withdrawal quantities on the MFLs. The proposed rule can be generally divided into two components, summarized as follows:[31]

1. Additional Review Criteria for all Individual Water Use Permit Applicants:
   - Primarily defines how the existing requirements that proposed water uses not cause harm to water resources will be addressed in the water use permitting review process with regard to the proposed MFLs.
   - Ensures that the impact of new withdrawals or increases in permitted water use will be eliminated or offset as a condition for issuance of a water use permit.
   - Provides protections for existing uses by specifying that existing uses that do not request increases in water use are considered consistent with the recovery strategy. Existing users who request new quantities will only be required to offset the impacts of their increase in water use, and not their existing use.
   - Establishes that the WMD may use the best available information and modeling tools to evaluate the potential impacts of proposed water uses to MFL water bodies.
   - Provides that the additional review criteria for individual water use permit applications will be implemented in the entirety of the SRWMD and the portion of the North Florida Regional Water Supply Planning Area in SJRWMD.

2. Additional Individual Permit Conditions:
   - Establishes two new special conditions that will be applied to new or renewed water use permits:
     - The first special condition will be applied to individual permits issued within the boundaries of the SRWMD and the portion of the North Florida Regional Water Supply Planning Area within the SJRWMD, and is designed to ensure continuing compliance of the water use with the ongoing efforts of the recovery strategy. This condition allows for future modification of the permit to address impacts to the MFL water bodies, and provides an important means for adaptive management by the issuing WMD in light of new technical tools, future hydrologic conditions, and the development of long-term recovery strategies to be developed in the context of the North Florida Regional Water Supply Plan.[32]
     - The second special condition will only be applied to individual water use permits for agricultural use located within Columbia, Suwannee, Union, and Gilchrist Counties, and the portions of Baker, Bradford, and Alachua Counties within the boundaries of the SRWMD. This special condition requires that the permittee participate in a Mobile Irrigation Lab (MIL) program and allow access to the Project Site for the purpose of conducting an MIL evaluation at least once every five years. This condition will provide the WMD with critical information about agricultural water use efficiency to direct future water conservation measures and agricultural cost-share programs.

Analysis of future water use projections and permit records indicates approximately 308 current water use permit holders in the SRWMD and affected area of SJRWMD will renew their permits in the next

[30] Region 1 includes Alachua, Baker, Bradford, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns counties. Planning in this area is conducted as part of the North Florida Regional Water Supply Partnership in coordination with the SRWMD. *See* St. Johns River Water Management District website, available at http://floridaswater.com/watersupply/planning.html (accessed March 24, 2015).

[31] Statement of Regulatory Costs (Revised 04/08/2014), available at http://www.dep.state.fl.us/water/waterpolicy/docs/mflrulemaking/serc_04_08_2014.pdf

[32] The North Florida Regional Water Supply Plan is a collaborative effort between DEP, the SRWMD, the SJRWMD, local governments, and other stakeholders throughout the region to ensure sustainable water supplies and protect north Florida's waterways and natural systems. See the North Florida Regional Water Supply Partnership website, available at http://northfloridawater.com/

five years, including 49 non-agricultural users and 259 agricultural users.[33] The assessment conducted indicated that it is unlikely that current non-agricultural water users will request increased water allocations that will be affected by the proposed rule in the next five years. Of the 259 agricultural water use permit holders likely to renew in this area in the next five years, approximately 28 would be expected to request new quantities likely to impact the MFLs, and would be required to offset or reduce their impacts to the MFL water bodies. The projected increase in water use that would require offsets of impacts among renewing existing permit holders is approximately 2.6 MGD. [34]

In addition to the renewal of current permits, assessment of water use projections and existing permit records and water uses indicated that it is unlikely that new non-agricultural permits will be affected by the proposed rule. However, approximately 400 new agricultural permit applications are anticipated over the next five years in the SRWMD. Of these, approximately 40 are projected to impact the MFL water bodies, requiring a total offset of approximately 11.2 MGD in new withdrawals.[35]

*Rulemaking Authority and Legislative Ratification*

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[36] Rulemaking authority is delegated by the Legislature[37] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[38] a rule. Agencies do not have discretion as to whether to engage in rulemaking.[39] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[40] The grant of rulemaking authority itself need not be detailed.[41] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[42]

An agency begins the formal rulemaking process by filing a notice of the proposed rule.[43] The notice is published by the Department of State in the Florida Administrative Register[44] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[45]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the five-year period after the rule goes into effect. First discussed in the analysis is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[46]

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[33] Statement of Regulatory Costs (Revised 04/08/2014), available at http://www.dep.state.fl.us/water/waterpolicy/docs/mflrulemaking/serc_04_08_2014.pdf (accessed March 24, 2015).
[34] Statement of Estimated Regulatory Costs for Rule 62-42.300, F.A.C., Executive Summary. On file with the House Rulemaking Oversight & Repeal Subcommittee.
[35] *Id.*
[36] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[37] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[38] Section 120.52(17), F.S.
[39] Section 120.54(1)(a), F.S.
[40] Sections 120.52(8) & 120.536(1), F.S.
[41] *Save the Manatee Club, Inc.,* supra at 599.
[42] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[43] Section 120.54(3)(a)1, F.S.
[44] Section 120.55(1)(b)2, F.S.
[45] Section 120.541(2)(a), F.S.
[46] Section 120.541(2)(a)1., F.S.

Next is the likely adverse impact on business competitiveness,[47] productivity, or innovation.[48] Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[49] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the five-year period, the rule cannot go into effect until ratified by the Legislature.[50]

Current law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[51] A rule must be filed for adoption before it may go into effect[52] and cannot be filed for adoption until completion of the rulemaking process.[53] A rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, and must be filed for adoption before being submitted for legislative ratification.

The economic impact of DEP's proposed rule 62-42.300, F.A.C., for MFLs for the Lower Santa Fe and Ichetucknee Rivers and Associated Springs is estimated to exceed the economic impact dollar threshold that triggers the legislative ratification requirement. The proposed rule was published in the Florida Administrative Register on March 7, 2014. A rulemaking hearing was scheduled for April 3, 2014.[54] A Notice of Change revising the Proposed Rules was published on April 8, 2014, with the result that the rule could not be filed for adoption and presented for legislative ratification before the end of the 2014 Regular Session. To avoid any significant impact on water quality in the affected areas, the Legislature enacted HB 7171 (2014) exempting the rule as changed on April 8, 2014, from ratification.

Subsequently, a challenge to the rule was filed with the Division of Administrative Hearings (DOAH). The Administrative Law Judge (ALJ) issued a ruling on September 11, 2014, finding that the proposed rules setting the river MFLs were vague because either the period of record or the technical source document for the flow duration curve used to set the MFLs was not referenced in the rule. The ALJ also found that the rest of proposed Chapter 62-42, including the springs MFLs and the recovery strategy are valid exercises of delegated legislative authority.[55]

On November 7, 2014, a Notice of Change was published making changes adding the existing technical information that the ALJ found missing in the previous version of the rule. The November change did not change the proposed minimum flows or the recovery strategy included in the proposed rule. A subsequent DOAH challenge was successfully defended by the DEP[56] and the rules was filed for adoption on February 18, 2015. A revised SERC was made available to the public on December 5, 2014.

**Effect of Proposed Changes**

The bill ratifies DEP's proposed rule 62-42.300, F.A.C., regarding MFLs for the Lower Santa Fe and Ichetucknee Rivers and their associated springs, satisfying the legislative ratification requirement in s. 120.541(3), F.S.

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[47] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[48] Section 120.541(2)(a) 2., F.S.
[49] Section 120.541(2)(a) 3., F.S.
[50] Section 120.541(3), F.S.
[51] Section 120.54(3)(e)6, F.S.; Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[52] Section 120.54(3)(e)6, F.S.
[53] Section 120.54(3)(e), F.S.
[54] Section 120.54(3)(c)1., F.S.
[55] DOAH Final Order, available at https://www.doah.state.fl.us/ROS/2014/14001420.pdf (accessed March 24, 2015).
[56] DOAH Summary Final Order, available at https://www.doah.state.fl.us/ROS/2014/14005658.pdf (accessed March 24, 2015.)

The bill expressly states that it serves no purpose other than satisfying the ratification requirement and that it will not be codified in the Florida Statutes. Furthermore, the bill specifies that it does not:

- Alter rulemaking authority delegated by prior law;
- Constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited; or
- Cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

B. SECTION DIRECTORY:

Section 1. Ratifies specified rules to satisfy the requirements of s. 120.541(3), F.S.

Section 2. The bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   According to the applicable SERC, and its revisions through December 12, 2014, implementation of the rule being ratified will result in a negative fiscal impact of $300,000 on the SRWMD. The rule requires DEP, in coordination with the SRWMD and the SJRWMD, to reevaluate the MFL and the present status of the waterbody and readopt the rule before December 31, 2019. Current statute[57] also requires that MFLs be reevaluated periodically and revised as needed. To the extent that these costs could be considered attributable to the proposed rule, SRWMD would include an analysis by district staff and would likely include contractor assistance and a peer review. (See C., below, for discussion of cost-share program of SRWMD relating to potential agricultural water conservation measures implicated by the likely reductions in water allocations under the rule.)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not have a direct fiscal impact on the private sector; however, the substantive policy of the rule is expected to have an economic impact on the private sector. Those impacts are analyzed in DEP's SERC for the rule, as revised.[58]

According to the SERC , based on the SRWMD's analysis of likely water use permit renewals in the SRWMD and the SJRWMD (permits expiring in years 2014 through 2018) and assessment of future

[57] Section 373.0421(3), F.S.
[58] All versions of the SERC are available for review on the DEP rulemaking website at: http://www.dep.state.fl.us/water/waterpolicy/mflrulemaking.htm (accessed March 24, 2015).

new water use projections and recent new water use permit applications, the SRWMD estimates rule 62-42.300, F.A.C., is likely to affect some future agricultural water users (approximately 68 over a five-year timeframe) in the Santa Fe Basin because potential adverse impacts to the MFL waterbodies resulting from new and increased water quantity allocations must be offset for 13.8 MGD. If all of the 13.8 MGD were offset by implementing additional agricultural water conservation measures, the cost of providing these offsets would be approximately $3 million over a five-year timeframe (approximately $600,000 per year) for agricultural water users. The existing SRWMD cost-share program typically covers 80 percent of retrofit costs and is expected to substantially reduce the cost to be borne by the agricultural users.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not grant additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

# APPENDIX A

**Summary and List of Springs of the Santa Fe and Ichetucknee Rivers**
**Prepared by the Suwannee River Water Management District**
**March 2014**

| Springs of the Santa Fe River | | |
|---|---|---|
| **Spring Name** | **County** | **Historic Magnitude** |
| COL1105041 (COLUMBIA) | COLUMBIA | 1 |
| COLUMBIA SPRING | COLUMBIA | 1 |
| DEVILS EAR SPRING (GILCHRIST) | GILCHRIST | 1 |
| DEVILS EYE SPRING (GILCHRIST) | GILCHRIST | 1 |
| HORNSBY SPRING | ALACHUA | 1 |
| JULY SPRING | COLUMBIA | 1 |
| SANTA FE RIVER RISE (ALACHUA) | ALACHUA | 1 |
| SANTA FE SPRING (COLUMBIA) | COLUMBIA | 1 |
| SIPHON CREEK RISE | GILCHRIST | 1 |
| TREEHOUSE SPRING | ALACHUA | 1 |
| ALA930971 (ALACHUA) | ALACHUA | 2 |
| ALA930972 (ALACHUA) | ALACHUA | 2 |
| ALLEN SPRING | COLUMBIA | 2 |
| COL1012972 (COLUMBIA) | COLUMBIA | 2 |
| COL101974 (COLUMBIA) | COLUMBIA | 2 |
| COL930971 (COLUMBIA) | COLUMBIA | 2 |
| DARBY SPRING | ALACHUA | 2 |
| DOGWOOD SPRING | GILCHRIST | 2 |
| GIL1012971 (GILCHRIST) | GILCHRIST | 2 |
| GIL1012974 (GILCHRIST) | GILCHRIST | 2 |
| GIL107971 (GILCHRIST) | GILCHRIST | 2 |
| GIL107972 (GILCHRIST) | GILCHRIST | 2 |
| GIL729971 (GILCHRIST) | GILCHRIST | 2 |
| GILCHRIST BLUE SPRING | GILCHRIST | 2 |
| GINNIE SPRING | GILCHRIST | 2 |
| JOHNSON SPRING | GILCHRIST | 2 |
| LILLY SPRING | GILCHRIST | 2 |
| MYRTLES FISSURE SPRING | GILCHRIST | 2 |
| PICKARD SPRING | GILCHRIST | 2 |
| POE SPRING | ALACHUA | 2 |
| SUW107971 (SUWANNEE) | SUWANNEE | 2 |
| TWIN SPRING | GILCHRIST | 2 |
| WILSON SPRING (COLUMBIA) | COLUMBIA | 2 |
| BETTY SPRING | SUWANNEE | 3 |
| CAMPGROUND SPRING (GILCHRIST) | GILCHRIST | 3 |
| COL101971 (COLUMBIA) | COLUMBIA | 3 |

| Springs of the Santa Fe River (cont.) | | |
|---|---|---|
| **Spring Name** | **County** | **Historic Magnitude** |
| COL428981 (COLUMBIA) | COLUMBIA | 3 |
| COL917971 (COLUMBIA) | COLUMBIA | 3 |
| COL928971 (COLUMBIA) | COLUMBIA | 3 |
| DEER SPRING (GILCHRIST) | GILCHRIST | 3 |
| GIL1012972 (GILCHRIST) | GILCHRIST | 3 |
| GIL928971 (GILCHRIST) | GILCHRIST | 3 |
| GIL99972 (GILCHRIST) | GILCHRIST | 3 |
| GIL99974 (GILCHRIST) | GILCHRIST | 3 |
| JONATHAN SPRING | COLUMBIA | 3 |
| LITTLE DEVIL SPRING | GILCHRIST | 3 |
| OASIS SPRING | GILCHRIST | 3 |
| RUM ISLAND SPRING | COLUMBIA | 3 |
| SAWDUST SPRING | COLUMBIA | 3 |
| SUNBEAM SPRING | COLUMBIA | 3 |
| SUW917971 (SUWANNEE) | SUWANNEE | 3 |
| TRAIL SPRING | GILCHRIST | 3 |
| TROOP SPRING | GILCHRIST | 3 |
| COL101975 (COLUMBIA) | COLUMBIA | 4 |
| COL61982 (COLUMBIA) | COLUMBIA | 4 |
| GIL729972 (GILCHRIST) | GILCHRIST | 4 |
| GIL729973 (GILCHRIST) | GILCHRIST | 4 |
| GIL928972 (GILCHRIST) | GILCHRIST | 4 |
| GIL99971 (GILCHRIST) | GILCHRIST | 4 |
| SUW917972 (SUWANNEE) | GILCHRIST | 4 |
| WORTHINGTON SPRING | UNION | 4 |
| HOLLY SPRING | GILCHRIST | UNKNOWN |
| JAMISON SPRINGS | COLUMBIA | UNKNOWN |
| LITTLE BLUE SPRING (GILCHRIST) | GILCHRIST | UNKNOWN |
| NAKED SPRING | GILCHRIST | UNKNOWN |
| POE WOODS SPRING | ALACHUA | UNKNOWN |
| UNNAMED SPRING (GILCHRIST) 2953480824601 | GILCHRIST | UNKNOWN |

| Springs of the Ichetucknee River | | |
|---|---|---|
| **Spring Name** | **County** | **Historic Magnitude** |
| BLUE HOLE SPRING (COLUMBIA) | COLUMBIA | 1 |
| CEDAR HEAD SPRING | COLUMBIA | 2 |
| COL1012971 (COLUMBIA) | COLUMBIA | 2 |
| DEVILS EYE SPRINGS (SUWANNEE) | SUWANNEE | 2 |
| ICHETUCKNEE HEAD SPRING (SUWANNEE) | SUWANNEE | 2 |
| MILL POND SPRINGS (COLUMBIA) | COLUMBIA | 2 |
| MISSION SPRINGS | COLUMBIA | 2 |
| ROARING SPRING | COLUMBIA | 2 |
| COFFEE SPRINGS | SUWANNEE | 3 |
| GRASSY HOLE SPRING | COLUMBIA | 3 |
| SINGING SPRING | COLUMBIA | UNKNOWN |

| Springs of the Santa Fe and Ichetucknee Rivers by Historic Magnitude | | | |
|---|---|---|---|
| **Spring Magnitude** | **Santa Fe River Springs** | **Ichetucknee Springs** | **Total: Santa Fe and Ichetucknee** |
| 1st Magnitude | 10 | 1 | 11 |
| 2nd Magnitude | 23 | 7 | 30 |
| 3rd Magnitude | 20 | 2 | 22 |
| 4th Magnitude | 8 | 0 | 8 |
| Other/Unknown | 6 | 1 | 7 |
| **Total:** | **67** | **11** | **78** |

**Notes:**

1) The above list only includes documented and mapped springs at the time of publication.
2) Several of the springs listed above are part of springs clusters, and are considered part of first magnitude spring groups.
3) Historic magnitudes presented were obtained from previous work conducted by SRWMD (Hornsby, D., & Ceryak, R. (1998). Springs of the Suwannee River Basin in Florida) and the Florida Geological Survey (Bulletin No. 66, 2004), as compiled by FDEP in 2011.
4) Collection of springflow data is ongoing and spring magnitudes may be subject to future revision.

A bill to be entitled

An act relating to ratification of rules of the Department of Environmental Protection; ratifying specified rules relating to minimum flows and levels for the Lower Santa Fe and Ichetucknee Rivers and their associated priority springs, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds of likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 62-42.300, Florida Administrative Code, entitled "Minimum Flows and Levels and Recovery and Prevention Strategies" as filed for adoption with the Department of State pursuant to the certification package dated February 17, 2015.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or

both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7083 PCB RORS 15-04 Ratification of Rules/Construction & Demolition Debris Disposal and Recycling/DEP
**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee, Beshears
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SPB 7060

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee | 12 Y, 0 N | Stranburg | Rubottom |
| 1) State Affairs Committee | | Gregory | Camechis |

## SUMMARY ANALYSIS

On January 26, 2015, the Florida Department of Environmental Protection (FDEP) filed for adoption amendments to Rule 62-701.730, F.A.C., "Construction and Demolition Debris Disposal and Recycling." The solid waste rule requires liners and leachate collection systems for new or expanding construction and demolition debris facilities that are not able to demonstrate a liner is not needed. FDEP adopted these amendments to conform to changes made by the Legislature in 2010 to the solid waste permitting statute.

The Statement of Estimated Regulatory Cost (SERC) estimates Rule 62-701.730 to have an impact in excess of $1 million over 5 years. A rule meeting that threshold cannot become effective unless ratified by the Legislature.[1]

PCB RORS 15-04 ratifies Rule 62-701.730, authorizing the rule to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

[1] Section 120.541(3), F.S.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[2] Rulemaking authority is delegated by the Legislature[3] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[4] a rule. Agencies do not have discretion whether to engage in rulemaking.[5] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[6] The grant of rulemaking authority itself need not be detailed.[7] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[8]

An agency begins the formal rulemaking process by filing a notice of the proposed rule.[9] The notice is published by the Department of State in the Florida Administrative Register[10] and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[11]

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First, the SERC must analyze the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.[12] Next, the SERC must analyze the rule's likely adverse impact on business competitiveness,[13] productivity, or innovation.[14] Finally, the SERC must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.[15] If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature.[16]

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[2] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[3] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[4] Section 120.52(17), F.S.
[5] Section 120.54(1)(a), F.S.
[6] Sections 120.52(8) & 120.536(1), F.S.
[7] *Save the Manatee Club, Inc.,* supra at 599.
[8] *Sloban v. Florida Board of Pharmacy,*982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[9] Section 120.54(3)(a)1, F.S.
[10] Section 120.55(1)(b)2, F.S.
[11] Section 120.541(2)(a), F.S.
[12] Section 120.541(2)(a)1., F.S.
[13] This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[14] Section 120.541(2)(a) 2., F.S.
[15] Section 120.541(2)(a) 3., F.S.
[16] Section 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[17] A rule must be filed for adoption before it may go into effect[18] and cannot be filed for adoption until completion of the rulemaking process.[19] As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Solid Waste Management permitting by Florida Department of Environmental Protection

The Florida Department of Environmental Protection (FDEP) began permitting of solid waste disposal facilities in 1989.[20] Prior to 2010, chapter 403, F.S., did not require the use of liners or leachate collection systems for most facilities. Liners or collection systems for construction and demolition debris disposal facilities were only required if FDEP could demonstrate that it reasonably expects that a lack of liners or collection systems would result in violations of ground water standards and criteria.[21]

In 2010, the Legislature amended s. 403.707(9)(b), F.S., to require liners and leachate collection systems at construction and demolition debris disposal units that did not have a FDEP permit authorizing construction or operation prior to July 1, 2010.[22] A construction and demolition debris disposal unit may be excepted from the liner and collection system requirement if the owner or operator demonstrates that the facility is not expected to cause violations of the groundwater standards and criteria if built without a liner, based upon:

- The types of waste received;
- The methods for controlling types of waste disposed of;
- The proximity of the groundwater and surface water; and
- The results of the hydrogeological and geotechnical investigations;.[23]

Adoption of Rules

In February 2014, FDEP initiated rulemaking on construction and demolition debris disposal and recycling. On January 26, 2015, FDEP filed for adoption Rule 62-701.730, F.A.C., titled "Construction and Demolition Debris Disposal and Recycling." The amendments to the rule relate to standards for liners and leachate collection systems for construction and demolition debris disposal facilities. This rule requires legislative ratification because the SERC's[24] estimated the rule's impact to be in excess of $1 million over 5 years.

Impact of Rules

Rule 62-701.730, F.A.C., implemented statutory authority for FDEP to establish standards for permitting facilities that collect solid waste from construction and demolition projects.[25] The statute was amended in 2010[26] to require liners and leachate collection systems at individual disposal units and lateral expansions of existing disposal units that had not received a FDEP permit authorizing construction or operation prior to July 1, 2010.

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[17] Section 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[18] Section 120.54(3)(e)6, F.S.
[19] Section 120.54(3)(e), F.S.
[20] Section 403.707, F.S. (1989).
[21] Rule 64-701.730(4)(a), F.A.C. (2012).
[22] Ch. 2010-205, LOF
[23] Section 403.707(9)(b), F.S.
[24] Copies of the SERCs prepared on the rule ratified by the bill are in the possession of the staff of the Regulatory Oversight & Repeal Subcommittee and are expected to be provided in published meeting materials when the PCB is noticed for consideration.
[25] Section 403.707(9), F.S.
[26] Ch. 2010-205, LOF.

The rule, as amended by FDEP, requires liners and leachate collection systems for new or expansion of existing construction and demolition debris disposal facilities that are not able to demonstrate that a liner is not needed.[27] These rule create costs associated with the new liner and associated components requirements, new closure requirements, and new leachate management requirements.[28] The rule is estimated to have a recurring annual cost of $828,854 for construction and demolition debris facilities to maintain the qualifications required by the rule.[29] The projected costs of the rule for the first five years of implementation exceed $4,000,000.[30]

**Effect of Proposed Changes**

The bill ratifies Rule 62-701.730, allowing the rule to become effective.

B. SECTION DIRECTORY:

Section 1: Ratifies Rule 62-701.730, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rule. The bill directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill creates no additional source of state revenues.

2. Expenditures:

   The bill itself requires no state expenditures. The SERC estimates FDEP will expend $140.24 per inspection for each facility covered by the rule twice a year under the rule.[31] The SERC also estimates the FDEP will spend $535.20 annually in reviewing applications for new construction and demolition debris disposal facilities.[32]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill appears to have no impact on local government revenues.

2. Expenditures:

   The bill does not impose additional expenditures on local governments.

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[27] 40 Fla. Admin. R. 191 (October 1, 2014).
[28] Florida Department of Environmental Protection, SERC Evaluations For Phase II Changes to Chapter 62-701, F.A.C., p. 6-8 (May 12, 2014) available at http://www.dep.state.fl.us/waste/categories/solid_waste/pages/rulemaking_62-701.htm (last visited March 24, 2015).
[29] Id. at 8.
[30] Id.
[31] Florida Department of Environmental Protection, Statement of Estimated Regulatory Cost Rule 62-701.730, Florida Administrative Code, p. 2 (May 2014) available at http://www.dep.state.fl.us/waste/categories/solid_waste/pages/rulemaking_62-701.htm (last visited March 24, 2015).
[32] Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not directly impact the private sector. Any resulting economic impacts are due to the substantive policy of the rule as addressed in the SERC for the rule. The SERC describes the rule's economic impact to be $828,854 per new facility incurred by an estimated two permittees operating solid waste management facilities in the first five years of implementation.[33] The impact would be expected to also affect the construction and demolition industries that use such facilities by raising the cost and/or limiting access to the facilities.

D. FISCAL COMMENTS:

The economic impacts projected in the SERC would result from the application and enforcement of the liner and leachate collection system requirements.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any 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 and municipalities.

2. Other:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for DEP to exercise its rulemaking authority implementing liner and leachate collection system standards for construction and demolition debris disposal facilities. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[33] Id. at 3.

A bill to be entitled

An act relating to ratification of rules of the Department of Environmental Protection; ratifying specified rules requiring liners and leachate collection systems at construction and demolition debris disposal facilities, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds of likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 62-701.730, Florida Administrative Code, entitled "Construction and Demolition Debris Disposal and Recycling," as filed for adoption with the Department of State pursuant to the certification package dated January 26, 2015.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or

both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7089 PCB GVOPS 15-06 OGSR/Credit History Information and Credit Scores/OFR
**SPONSOR(S):** Government Operations Subcommittee, Narain
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7012

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 11 Y, 0 N | Harrington | Williamson |
| 1) State Affairs Committee | | Harrington | Camechis |

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of Financial Regulation (OFR) licenses and regulates non-depository loan originators (mortgage brokers and mortgage lenders). Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness. As part of the licensure process, an applicant must authorize the release of an independent credit report and credit score to OFR.

Current law provides a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators. OFR may provide the confidential and exempt credit history information or credit scores to another governmental entity having oversight or regulatory or law enforcement authority.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Federal Regulation of Loan Originators

The federal Housing and Economic Recovery Act (act) was enacted in 2008.[4] Title V of the act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE Act). The intent of the SAFE Act is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements.[5]

The SAFE Act directs the establishment of a nationwide mortgage licensing system and registry (NMLS registry or registry).[6] The NMLS registry collects and maintains specified information on loan originators to create a common database among federal and state regulators.[7] Only authorized recipients may access the information in the NMLS registry, and authorized recipients may not share information obtained from the registry or provide third party access to the services or consumer report information.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] Public Law 110-289, July 30, 2008.
[5] Public Law 110-289, Title V, s. 1502.
[6] *Id.* at ss. 1502 and 1503.
[7] *Id.*

The SAFE Act requires states to comply with its minimum standards and to participate in the NMLS registry.[8] It also requires loan originators to obtain an annual state license and provide fingerprints for purposes of a criminal background check, and allows the state regulator to access a credit report through the registry.[9]

Florida Regulation of Loan Originators

The Office of Financial Regulation (OFR) regulates non-depository loan originators and other specified financial entities.[10] In 2009, the Legislature enacted legislation to bring the state into compliance with the SAFE Act.[11] The legislation required OFR to license loan originators.[12] Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness.

The loan originator licensure and renewal process includes a review of the applicant's credit report and credit information, which OFR accesses through the NMLS registry.[13] Before OFR can access the information, the applicant must complete the credit authorization process through the NMLS registry.[14] The credit report obtained through the NMLS registry is a TransUnion Credit Report with a Vantage Score.[15] OFR is required to comply with terms and conditions relating to the confidentiality of the registry information.

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.[16] OFR may provide the confidential and exempt[17] information to another governmental entity having oversight or regulatory or law enforcement authority.[18]

Section 2 of chapter 2010-169, L.O.F., which is the public necessity statement for the public record exemption, provides that:

> Credit history information and credit scores are sensitive and personal information. Disclosure of such information and scores could cause harm to the person who is the subject of the information. Such information could be defamatory and could cause unwarranted damage to the name or reputation of the person who is the subject of the information, especially if such information is inaccurate. Furthermore, access to such information could jeopardize the

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[8] The SAFE Act provides that if the state does not enact minimum regulatory standards that comply with the SAFE Act after the enactment, the U.S. Department of Housing and Urban Development will enforce the minimum standards for loan originators in the state as state-licensed loan originators. *Id.* at s. 1508.

[9] *Id.* at ss. 1504 and 1505.

[10] OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

[11] Chapter 2009-241, L.O.F.

[12] *Id.*

[13] As part of the licensure process, OFR evaluates the credit report and credit history in the context of the "totality of the circumstances." *See* ss. 494.00611 and 494.00321, F.S., and chapter 69V-40.0113, F.A.C.

[14] *See* Frequently Asked Questions at: http://mortgage.nationwidelicensingsystem.org/profreq/Pages/FAQ.aspx#credit (last visited March 10, 2015).

[15] *Id.*

[16] Chapter 2010-169, L.O.F.; codified as s. 494.00125(3), F.S.

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

[18] Section 494.00125(3)(b), F.S.

financial safety of the individual who is the subject of that information by placing the person at risk of becoming the object of identity theft.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.[19]

During the 2014 interim, subcommittee staff met with OFR staff as part of the Open Government Sunset Review process. OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

**Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.

B. SECTION DIRECTORY:

Section 1 amends s. 494.00125, F.S., to save from repeal the public record exemption for credit history information and credit scores held by OFR.

Section 2 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

None.

[19] Section 494.00125(3)(d), F.S.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 494.00125, F.S., relating to an exemption from public records requirements for credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers, and mortgage lenders; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 494.00125, Florida Statutes, is amended to read:

494.00125 Public records exemptions.—

(3) CREDIT INFORMATION.—

(a) Credit history information and credit scores held by the office and related to licensing under ss. 494.001-494.0077 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Credit history information and credit scores made confidential and exempt pursuant to paragraph (a) may be provided by the office to another governmental entity having oversight or regulatory or law enforcement authority.

(c) This subsection does not apply to information that is otherwise publicly available.

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2015.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7101 PCB GVOPS 15-07 OGSR/Victims of Stalking or Aggravated Stalking
**SPONSOR(S):** Government Operations Subcommittee, Narain
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 7034

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 11 Y, 0 N | Williamson | Williamson |
| 1) State Affairs Committee | | Williamson | Camechis |

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of the Attorney General administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence; encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address. Current law provides a public record exemption for the ACP. The address, corresponding telephone number, and social security number of a program participant held by the Office of the Attorney General is exempt from public record requirements. In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections and the Department of State are exempt from public record requirements.

Current law also provides a public record exemption for the name, address, and telephone number of a victim of stalking or aggravated stalking in the same manner as a participant in the ACP provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the requirements of the program.

The bill reenacts the public record exemption for victims of stalking or aggravated stalking, which will repeal on October 2, 2015, if this bill does not become law.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] (Act) sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Address Confidentiality Program for Victims of Domestic Violence[4]

The Office of the Attorney General (office) administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to:[5]

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.

An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated may apply to the Attorney General to have an address designated by the Attorney General to serve as the person's address or the address of the minor or incapacitated person.[6] Each participant is assigned a substitute address that is not related to the participant's actual location.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[4] *See* ss. 741.401-741.409, F.S.
[5] Section 741.401, F.S.
[6] Section 741.403(1), F.S.

An ACP participant who is qualified to vote may request an absentee ballot, and will automatically receive absentee ballots for all elections in the jurisdiction in which the participant resides.[7] Current law prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.[8] Thus, the participant can vote in the elections for which he or she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public Record Exemption for the ACP

Current law provides a public record exemption for the ACP.[9] The address, corresponding telephone number, and social security number of a program participant held by the office is exempt[10] from public record requirements. For purposes of the public record exemption, the term "address" means a residential street address, school address, or work address, as specified on the individual's application to be a program participant.[11]

In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections and the Department of State are exempt from public record requirements.[12]

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for certain information concerning persons who are victims of stalking or aggravated stalking.[13] Section 97.0585(3), F.S., provides that the name, address, and telephone number of a victim of stalking or aggravated stalking are exempt in the same manner as a participant in the ACP provided the victim files a sworn statement of stalking with the office and otherwise complies with the requirements of the ACP.

Section 2 of chapter 2010-115, L.O.F., which is the public necessity statement for the exemption, provides, in part, that:

> The public-records exemption for the name is a public necessity because access to such name narrows the location of a stalking victim to a specific, geographic voting precinct. In addition, access to the address and telephone number provides specific location and contact information for the victim. Therefore, access to the name, address, and telephone number defeats the goal of providing safety and security. Allowing victims of stalking or aggravated stalking to use a substitute mailing address designated by the Office of the Attorney General facilitates the goal of providing safety and security.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.[14]

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[7] Section 741.406, F.S.
[8] *Id.*
[9] Section 741.465, F.S.
[10] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).
[11] Section 741.465(1), F.S.
[12] Section 741.465(2), F.S.
[13] Chapter 2010-115, L.O.F.; codified as s. 97.0585(3), F.S.
[14] Section 97.0585(5), F.S.

During the 2014 interim, subcommittee staff reviewed information provided by the office and the Division of Elections (division) in the Department of State. Subcommittee staff also met with staff from the office and the division. Staff of the office and the division indicated that the public record exemption created in 2010 for victims of stalking or aggravated stalking actually expanded the ACP to include such victims. In addition, staff of the office and division recommended reenactment of the public record exemption for victims of stalking or aggravated stalking.

**Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for the names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking provided the victim files a sworn statement of stalking with the office and otherwise complies with the ACP. The bill also transfers the public record exemption from the Election Code to s. 741.4651, F.S., in order to co-locate the public record exemption for victims of stalking or aggravated stalking with the public record exemption for the ACP.

B. SECTION DIRECTORY:

Section 1 transfers, renumbers, and amends s. 97.0585, F.S., to save from repeal the public record exemption for certain information regarding persons who are victims of stalking or aggravated stalking.

Section 2 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; transferring, renumbering, and amending s. 97.0585, F.S., relating to an exemption from public records requirements for certain information regarding persons who are victims of stalking or aggravated stalking; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (4) of section 97.0585, Florida Statutes, is renumbered as subsection (3), and present subsections (3) and (5) of that section are transferred and renumbered as section 741.4651, Florida Statutes, and amended to read:

741.4651 Public records exemption; victims of stalking or aggravated stalking.—

~~(3)~~ The names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution in the same manner that the names, addresses, and telephone numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence which are held by the Attorney General under s. 741.465 are exempt from disclosure, provided

that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409.

~~(5) Subsection (3) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2015.

PCB SAC 15-02

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB SAC 15-02 State Lands
**SPONSOR(S):** State Affairs Committee
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: State Affairs Committee | | Gregory | Camechis |

## SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) addresses a number of issues relating to State Lands, such as:

- Adding preservation of low impact agriculture to the list of short-term and long-term state land management goals;
- Directing land managers, as part of their every 10-year management plan update, to identify conservation lands that could support low impact agricultural uses while maintaining the land's conservation purpose;
- Directing land managers, as part of their every 10-year management plan update, to identify conservation lands that could be disposed of in fee simple or with the state retaining a permanent conservation easement;
- Requiring exchanges involving conservation lands to result in an "equal or greater conservation benefit" rather than a "net positive conservation benefit;"
- Requiring the Division of State Lands (DSL), at least every 10 years, to review all Board of Trustees of the Internal Improvement Trust Fund (Board of Trustee)-titled conservation lands, along with lands identified in any updated land management plan, to determine whether any can support low impact agricultural uses while maintaining the land's conservation purpose, and requires DSL to direct managing agencies to offer agreements for conducting low impact agriculture on these lands;
- Requiring DSL, at least every 10 years, to review all Board of Trustee-titled conservation lands, along with lands identified in any updated land management plan, to determine if any are no longer needed for conservation purposes and can be disposed of in fee simple or with the state retaining a permanent conservation easement;
- Requiring DSL, at least every 10 years, to review all Board of Trustee-titled non-conservation lands and recommend to the Board of Trustees whether the lands should be retained or disposed of;
- Allowing a person to bypass the Acquisition and Restoration Council (ARC) when seeking to exchange certain lands with the state and submit a request directly to the Board of Trustees. A person who owns land contiguous to BOT-titled land may submit a request directly to the BOT to exchange all or a portion of the state-owned land, with the state retaining a permanent conservation easement, for a permanent conservation easement over all or a portion of the contiguous privately owned land;
- Requiring ARC, when developing proposed rules related to land acquisitions under the Florida Forever Program, to give weight to projects that allow the state to purchase permanent conservation easements that authorize low-impact agricultural uses while achieving the intended conservation purposes;
- Requiring ARC to give priority to proposed projects under the Florida Forever Program that can be acquired in less than fee and projects that contribute to improving springs or groundwater;
- Allowing a Florida Forever project applicant to appeal to the Board of Trustees a decision by ARC to exclude the applicant's property from the Florida Forever project list;
- Requiring DEP to add the following to the existing SOLARIS state lands database by July 1, 2017: federally owned conservation lands; lands on which the federal government holds a conservation easement; and all lands on which the state holds a conservation easement;
- Requiring each county and city to submit to DEP, by July 1, 2017, a list of all conservation lands owned by the local government and lands on which the local government holds a permanent conservation easement. Financially disadvantaged small communities have until July 1, 2018, to submit the same information;
- Directing DEP to complete a study by January 1, 2017, regarding the technical and economic feasibility of including the following lands in a public lands inventory: privately owned lands that may not be developed due to certain local, state, or federal regulatory requirements; privately owned lands where development rights have been transferred; privately owned lands under a permanent conservation easement; privately owned conservation lands; and lands that are part of a mitigation bank; and
- Requiring DEP to consolidate individually titled parcels of state-owned conservation lands that are contiguous to other parcels of state-owned conservation lands under a single unified title.

The PCB appears to have a negative fiscal impact on DEP. (See Fiscal Comments section below).

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Nature and Extent of State Lands**

The State of Florida owns lands throughout the state for many purposes including preservation, conservation, recreation, water management, historic preservation and administration of government. These lands include:

- All swamp and overflowed lands held by the state or which may inure to the state;
- All lands owned by the state by right of its sovereignty;[1]
- All internal improvement lands proper;
- All tidal lands;
- All lands covered by shallow waters of the ocean or gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;
- All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for transportation facilities and transportation corridors and canal rights-of-way; and
- All lands which have accrued, or which may accrue, to the state.[2]

These lands are held in trust for the use and benefit of the people of Florida by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).[3] The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture.[4] This body may acquire, sell, transfer, and administer state lands in the manner consistent with chapters 253 and 259, F.S.[5]

The Department of Environmental Protection (DEP), through its Division of State Lands (DSL), performs all staff duties and functions related to the acquisition, administration, and disposition of state lands.[6] The Water Management Districts (WMD) may perform staff duties and functions related to their regulation of water resource management,[7] such as authorizing the use of sovereign submerged lands.[8] The Department of Agriculture and Consumer Services (DACS) may perform staff duties and functions related to their regulation of aquaculture leases and the acquisition, administration, and disposition of conservation easements,[9] such as authorizing the use of sovereign submerged lands.[10] Lastly, the Fish and Wildlife Conservation Commission (FWC) may authorize use of sovereign lands related to aquatic weed control and aquatic plant management.[11]

According to the DEP, the Board of Trustees own approximately 12 million acres.[12] Approximately 3.2 million of these acres are conservation lands, 113,000 acres are non-conservation lands, and 9 million

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[1] "Sovereignty submerged lands" are those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated. Rule 18-21.003(61), F.A.C.
[2] Section 253.03(1), F.S.
[3] Section 253.001, F.S.
[4] Section 253.02(1), F.S.
[5] Id.
[6] Section 253.002(1), F.S.
[7] Id.
[8] Rule 18-21.0051(2), F.A.C.
[9] Section 253.002(1), F.S.
[10] Rule 18-21.0051(3), F.A.C.
[11] Section 253.002(1), F.S.
[12] Department of Environmental Protection Presentation on Division of State Lands, State Affairs Committee, March 6 2015, available at

acres are sovereign submerged lands.[13] The Board of Trustees authorizes several agencies to manage state lands including DACS, FWC, the Department of State (DOS), the DEP Office of Coastal and Aquatic Management, the DEP Office of Greenways & Trails (OGT), and the Florida Park Service.[14] Other entities may also manage the land, subject to approval of the Board of Trustees. These agencies and other entities hold a property interest in the land in the form of a management agreement, lease, or other property instrument.[15] These instruments may not be executed for a period greater than is necessary to provide reasonable use of the land for the existing or planned life cycle or amortization of the improvements.[16]

**Use of State Conservation and Non-Conservation Lands**

**Present Situation**

"Conservation lands" are lands currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands acquired solely to facilitate the acquisition of other conservation lands.[17] Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation ("Non-conservation lands") are not designated conservation lands.[18] Non-conservation lands include the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, state university or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources.[19]

All state agencies who use state lands must submit a management plan to DSL.[20] This management plan must include:

- The common name of the property;
- A map showing the location and boundaries of the property plus any structures or improvements to the property;
- The legal description and acreage of the property;
- The degree of title interest held by the Board, including reservations and encumbrances such as leases;
- The land acquisition program, if any, under which the property was acquired;
- The designated single use or multiple use management for the property;
- Proximity of property to other significant State, local, or federal land or water resources;
- A statement as to whether the property is within an aquatic preserve or a designated area of critical State concern, or an area under study for such designation;
- The location and description of known and reasonably identifiable renewable and non-renewable resources of the property;
- A description of actions the agency plans to take to locate and identify unknown resources;
- The identification of resources on the property that are listed in the Natural Area Inventory;
- A description of past uses of the property;
- A detailed description of existing and planned use(s) of the property;
- For managed areas larger than 1,000 acres, an analysis of the multiple-use potential of the property;

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http://myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2851&PublicationType=Committees&DocumentType=Meeting Packets&SessionId=76.

[13] Id.
[14] Id.
[15] Section 253.034(4), F.S.
[16] Id.
[17] Section 253.034(2)(c), F.S.
[18] Id.
[19] Id.
[20] Rule 18-2.018(3)(a)5.a., F.A.C.

- A detailed assessment of the impact of planned uses on the renewable and non-renewable resources of the property, including soil and water resources, and a detailed description of the specific actions that will be taken to protect, enhance and conserve these resources and to mitigate damage caused by such uses, including a description of how the manager plans to control and prevent soil erosion and soil or water contamination;
- A description of management needs and problems for the property;
- Identification of adjacent land uses that conflict with the planned use of the property;
- A description of legislative or executive directives that constrain the use of such property;
- A finding regarding whether each planned use complies with the State Lands Management Plan;
- An assessment as to whether the property, or any portion, should be declared surplus;
- Identification of other parcels of land within or immediately adjacent to the property that should be purchased because they are essential to management of the property;
- A description of the management responsibilities of each agency and how such responsibilities will be coordinated; and
- A statement concerning the extent of public involvement and local government participation in the development of the plan.[21]

All other lessees who use state lands must submit an operational report to DSL within a year of the execution of the lease. This operational report must include:

- The common name of the property;
- A map showing the approximate location and boundaries of the property, the location of any structures or improvements to the property, and a statement as to whether the property is adjacent to an aquatic preserve or a designated area of critical state concern or an area under study for such designation;
- The legal description and acreage of the property;
- The land acquisition program, if any, under which the property was acquired;
- The designated single or multiple use management for the property;
- The approximate location and description of known renewable and non-renewable resources of the property;
- A description of past and existing uses of the property;
- A description of alternative or multiple uses of the property considered by the lessee and a statement detailing why such uses were not adopted;
- An assessment of the impact of planned uses on the renewable and non-renewable resources of the property and a description of the specific actions that will be taken to protect, enhance and conserve those resources and to compensate/mitigate the damage that is caused by such use;
- A description of management needs and problems on the property;
- A description of the management responsibilities of each entity and how such responsibilities will be coordinated;
- A statement concerning the extent of public involvement and local government participation, if any, in the development of the plan; and
- A statement of gross income generated, net income and expenses.[22]

Land management plans for lands must also include short-term and long-term goals including measurable objectives to achieve those goals.[23] Short-term and long-term management goals must include measurable objectives for the following, as appropriate:

- Habitat restoration and improvement;
- Public access and recreational opportunities;
- Hydrological preservation and restoration;

[21] Rule 18-2.021(4), F.A.C.
[22] Rule 18-2.018(3)(a)5.b., F.A.C.
[23] Section 253.034(5)(a), F.A.C.

- Sustainable forest management;
- Exotic and invasive species maintenance and control;
- Capital facilities and infrastructure;
- Cultural and historical resources; and
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

While developing a land management plan, at least one public meeting must be held in one of the affected counties.[24]

Managers of conservation and non-conservation land must submit an updated land management plan every ten years for approval by the Board of Trustees.[25] While all conservation management plans must include an assessment for sustainable forestry potential on each management unit,[26] maintenance of any existing agricultural use is not required. The Florida Forever Program and P2000 Program do not contemplate preservation of agricultural practices as a reason for conservation acquisition.[27] The Legislature created the Rural and Family Lands Protection Program separately for the purpose of preserving agricultural practices.[28] Likewise, low-impact agriculture is allowed on conservation lands where compatible with the reasons for acquisition and the mission-specific purposes for preservation.[29] According to DEP, it has entered into grazing and timber leases with various agencies managing conservation lands.[30]

All conservation land managers must also include an analysis of any lands that may no longer be needed for conservation and suitable for potential surplus in each management plan or update.[31] DSL does not require this surplus analysis for managers of non-conservation lands.[32]

Upon completion of the management plan, the Acquisition and Restoration Council (ARC) reviews the land management plan and provides a recommendation to the Board of Trustees.[33] ARC is a ten member board established to assist the Board of Trustees in reviewing the recommendations and plans for state-owned lands.[34] The Board of Trustees may approve, modify, or reject the land management plan.[35] The land management plan becomes effective upon approval of the Board of Trustees.[36]

**Effect of the Proposed Changes**

The PCB:

- Amends s. 253.034(1), F.S., to make a legislative finding that as of January 1, 2014, approximately 3.2 million acres of conservation lands are titled in the name of the Board of Trustees. Approximately 1.2 million acres of these conservation lands, which equal

[24] Section 253.034(5)(f), F.A.C.
[25] Section 253.034(5), F.S.
[26] Section 253.036, F.S.; Rule 18-2.021(3)(n)2., F.A.C.
[27] See Sections 259.101 and 259.105, F.S.
[28] Chapter 5I-7, F.A.C.; Department of Agriculture and Consumer Services, Rural and Family Lands Protection Program, http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/Land-Planning-and-Administration-Section/Rural-and-Family-Lands-Protection-Program3 (last visited March 19, 2015).
[29] Department of Environmental Protection, Agency Analysis of 2015 State Affairs Committee PCB, p. 2 (March 6, 2015).
[30] Id.
[31] Rule 18-2.021(4), F.A.C.
[32] *See* Rule 18-2.018(3)(a)5.b., F.A.C.
[33] Section 253.034(5)(d), F.S.; Land management plans submitted by the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families are not subject to review by ARC. Section 253.034(9), F.S.
[34] Section 259.035, F.S.; Four members are appointed by the Governor. One member is appointed by the Secretary of DEP. One member is appointed by the Director of the Florida Forest Service. Two members are appointed by the Executive Director of FWC. One member is appointed by the Secretary of DOS. Lastly, one member is appointed by the Commissioner of Agriculture.
[35] Section 253.034(5)(h), F.S.
[36] Section 253.034(5)(d), F.s.

approximately 3.4 percent of the total land area of Florida, are uplands located above the boundary of jurisdictional wetlands;

- Amends s. 253.034(5)(b), F.S., to add preservation of low impact agriculture to the list of measurable objectives for short-term and long-term state land management goals for conservation lands;
- Amends s. 253.035(5)(e), F.S., to
  - Direct land managers, as part of their every 10-year management plan update, to identify conservation lands that could support low impact agricultural uses while maintaining the land's conservation purpose;
  - Direct land managers, as part of their every 10-year management plan update, to identify conservation lands that could be disposed of in fee simple or with the state retaining a permanent conservation easement;
- Amends s. 253.034(6)(c), F.S., to require DSL, at least every 10 years, to review all Board of Trustee-titled conservation lands, along with lands identified in any updated land management plan, to determine whether any can support low impact agricultural uses while maintaining the land's conservation purpose. ARC must review this list of lands and provide a recommendation to DSL within 9 months whether such lands can support low impact agriculture. DSL must review ARC's recommendation and then direct the land managers to offer agreements for low impact agriculture on lands that DSL determines, taking into account the recommendations of ARC, could support low impact agricultural uses while maintaining the land's conservation purpose. This provision does not prohibit a managing agency from entering into agreements as otherwise provided by law. These agreements may not exceed a ten year term; and
- Amends s. 253.034(6)(c), F.S., to require DSL, at least every 10 years, to review all Board of Trustee-titled non-conservation lands and recommend to the Board of Trustees whether the lands should be retained or disposed of.

These changes may require the Board of Trustees to amend chapter 18-2, F.A.C.

## Disposition of State Conservation and Non-Conservation Lands

### Present Situation

The Board of Trustees may determine which state lands may be surplused.[37] To dispose of conservation lands, the Board of Trustees must determine whether the land is no longer needed for conservation purposes and may dispose of such lands by an affirmative vote of at least three members.[38] To dispose of non-conservation lands, the Board of Trustees must determine whether the land is no longer needed and may dispose of such lands by an affirmative vote of at least three members.[39]

Every ten years, the land manager evaluates and indicates whether state lands are still being used for the purpose for which they were originally leased. For conservation lands, ARC reviews the finding and then provides a recommendation to the Board of Trustees whether the lands can be surplused.[40] For non-conservation lands, DSL reviews the finding and then provides a recommendation to the Board of Trustees whether the lands can be surplused.[41]

To exchange land involving the disposition of conservation lands, the Board of Trustees must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit.[42] When exchanging conservation lands acquired by the state through gift,

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[37] Section 253.034(6), F.S.
[38] Id.
[39] Id.
[40] Section 253.034(6)(c), F.S.
[41] Id.
[42] Section 253.034(6), F.S.

donation, or any other conveyance for which no consideration was paid, the Board of Trustees may request land of equal conservation value from the county or local government but no other consideration.[43]

The Board of Trustees must first offer non-conservation lands at no cost to county and local governments when the lands were acquired by the state through gift, donation, or any other conveyance for which no consideration was paid and the use proposed by the county or local government is for a public purpose.[44]

When exchanging state-owned lands not acquired by the state through gift, donation, or any other conveyance for which no consideration was paid with counties or local governments, the exchanges may be of equal value.[45] "Equal value" is defined as the conservation benefit of the lands being offered for exchange by a county or local government being equal or greater in conservation benefit than the state-owned lands.[46] Such exchanges may include cash transactions if based on an appropriate measure of value of the state-owned land, but must also include the determination of a net-positive conservation benefit by ARC, irrespective of appraised value.[47]

Before a building or parcel of land is offered for lease or sale, DSL must first offer the land for lease to state agencies, state universities, and Florida College System institutions.[48]

Proceeds from any sale of surplus lands must be deposited into the fund from which such lands were acquired.[49] However, if the fund from which the lands were originally acquired no longer exists, such proceeds must be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands.[50] Funds received from the sale of surplus non-conservation lands, or lands that were acquired by gift, by donation, or for no consideration, must be deposited into the Internal Improvement Trust Fund.[51]

The Board of Trustees may not surplus or exchange lands if the effect of the sale or exchange would cause all or any portion of the interest on any revenue bonds issued to lose their tax exempt status.[52]

**Effect of Proposed Changes**

The PCB amends s. 253.034(6), F.S., to require exchanges involving conservation lands to result in an "equal or greater conservation benefit" rather than a "net positive conservation benefit."

The PCB amends s. 253.034(6)(c), F.S., to require DSL, at least every 10 years, to review all Board of Trustee-titled conservation lands, along with lands identified in any updated land management plan, to determine if any are no longer needed for conservation purposes and can be disposed of in fee simple or with the state retaining a permanent conservation easement. ARC must review this list of lands and provide a recommendation to DSL within 9 months as to whether such lands are no longer needed for conservation purposes. The Board of Trustees must review the list created by DSL and ARC's recommendation and then dispose of those lands, in fee simple or with the state retaining a permanent conservation easement, that the Board of Trustees determines, by an affirmative vote of three members of the board, are no longer needed for conservation purposes.

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[43] Section 253.42(1), F.S.
[44] Id.
[45] Section 253.42(2), F.S.
[46] Id.
[47] Id.
[48] Section 253.034(13), F.S.
[49] Section 253.034(6)(k), F.S.
[50] Id.
[51] Id.
[52] Section 253.034(6)(l), F.S.

The PCB creates s. 253.42(4), F.S., to allow a land owner to bypass ARC when seeking to exchange with the state private lands contiguous to state-owned lands and submit a request directly to the Board of Trustees. A person who owns land contiguous to Board of Trustees-titled land may submit a request directly to the Board of Trustees to exchange title to all or a portion of the contiguous state-owned land, with the state retaining a permanent conservation easement over the former state lands, for a permanent conservation easement over all or a portion of the contiguous privately owned land. The conservation easements must allow the person to use the land for low-impact agricultural purposes. This provision does not allow the Board of Trustees to exchange sovereign submerged lands. For the Board of Trustees to approve the exchange:

- The number of acres of state-owned land being exchanged must be equal to or less than the number of acres of privately held land that the person is willing to put under a permanent conservation easement;
- The privately held land must be bordered by state-owned land on at least 30 percent of its perimeter and the exchange must not create an inholding;
- Approval of the exchange must not cause the Board of Trustees, DEP, DACS, FWC, of a WMD to violate the terms of a preexisting lease;
- For conservation land, the Board of Trustees must determine the land is no longer needed for a conservation purpose;
- Approval of the exchange must not conflict with an existing flowage easement; and
- At least three members of the Board of Trustees must approve the request,

The Board of Trustees must give special consideration to a request that maintains public access for any recreational purpose allowed on the state-owned land at the time the request is submitted. Further, once exchanged, lands subject to permanent conservation easements are subject to inspection by DEP to ensure compliance with the terms of the permanent conservation easement.

## Florida Forever Selection Process

### Present Situation

In 1999, the Legislature created the Florida Forever Program.[53] This program sought to purchase environmentally sensitive lands to protect natural resources, avoid degradation of water resources, improve recreational opportunities, and preserve wildlife habitat.[54] The state issued Florida Forever Bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.[55]

ARC, with the assistance of the Florida Natural Area Inventories and several state agencies, evaluates applications for acquisition projects under the Florida Forever Program and provides recommendations to the Board of Trustees.[56] In order to be considered for acquisition under the Florida Forever Program, the project must contribute to the achievement of the following goals:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state;

[53] Chapter 199-247, Laws of Fla.
[54] Section 259.105(2)(a), F.S.
[55] Section 215.618(1)(a), F.S.
[56] Section 259.105(3)&(8), F.S.

- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public recreational and educational opportunities;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; or
- Increase the amount of open space available in urban areas.[57]

Further, ARC must give weight to the following factors when considering applications:

- The project meets multiple goals described above;
- The project is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- The project enhances or facilitates management of properties already under public ownership;
- The project has significant archaeological or historic value;
- The project has funding sources that are identified and assured through at least the first 2 years of the project;
- The project contributes to the solution of water resource problems on a regional basis;
- The project has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished;
- The project implements an element from a plan developed by an ecosystem management team;
- The project is one of the components of the Everglades restoration effort;
- The project may be purchased at 80 percent of appraised value;
- The project may be acquired, in whole or in part, using alternatives to fee simple, including but not limited to, tax incentives, mitigation funds, or other revenues; the purchase of development rights, hunting rights, agricultural or silvicultural rights, or mineral rights; or obtaining conservation easements or flowage easements; and
- The project is a joint acquisition, either among public agencies, nonprofit organizations, or private entities, or by a public-private partnership.[58]

Further, ARC must give increased priority to those projects which have matching funds available and to project elements previously identified on an acquisition list that can be acquired at 80 percent or less of appraised value. ARC must also give increased priority to those projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions including:

- Protecting habitat on nonmilitary land for any species found on military land that is designated as threatened or endangered, or is a candidate for such designation under the Endangered Species Act or any Florida statute;
- Protecting areas underlying low-level military air corridors or operating areas; and
- Protecting areas identified as clear zones, accident potential zones, and air installation compatible use buffer zones delineated by our military partners, and for which federal or other funding is available to assist with the project.

**Effect of the Proposed Changes**

The PCB:

- Repeals s. 259.105(3)(m), F.S., that required, in the 2013-2014 fiscal year, Florida Forever Funds be used for land acquisition projects that provided conservation lands to protect the state's military installations against encroachment and provided acquisition of less than fee

[57] Section 259.105(5), F.S.
[58] Section 259.105(10), F.S.

interest for conservation lands needed for military buffering or springs or water resource protection;

- Repeals s. 259.105(4), F.S., that allowed, for the 2014-2015 fiscal year only, that certain funds from the General Appropriations Act be used by the WMDs for land acquisition identified by the WMDs as being needed for water resource protection or ecosystem restoration;
- Amends s. 259.105(10), F.S., to require ARC, when developing proposed rules related to land acquisitions under the Florida Forever Program, to give weight to projects that allow the state to purchase permanent conservation easements that authorize low-impact agricultural uses while achieving the intended conservation purposes;
- Amends s. 259.105(11), F.S., to require ARC to give priority to proposed projects under Florida Forever that can be acquired in less than fee and projects that contribute to improving springs or groundwater; and
- Amends s. 259.105(14), F.S., to allow a Florida Forever project applicant to appeal to the Board of Trustees a decision by ARC to exclude the applicant's property from the Florida Forever project list. The Board of Trustees, by an affirmative vote of three members, may direct ARC to place a particular project on the Florida Forever project list.

These changes may require the Board of Trustees to amend chapter 18-24, F.A.C.

**State Lands Record Keeping**

**Present Situation**

The Board of Trustees must maintain a public land office that keeps and preserves all records, surveys, plats, maps, field notes, and patents, and all other evidence touching the title and description of the public domain, and all lands granted by Congress to this state.[59] This is done through the Bureau of Survey and Mapping.[60] The Bureau maintains a repository of all the records, surveys, plats, maps, field notes, and patents and all other evidence touching the title and description of the public domain.[61]

Annually, the Board of Trustees must prepare an inventory of all publicly owned lands within the state using tax roll data provided by the Department of Revenue (DOR).[62] The inventory must include all lands owned by any unit of state government or local government; by the Federal Government, to the greatest extent possible; and by any other public entity.[63] The inventory must include a legal description or proper reference, the number of acres or square feet within the boundaries, and the assessed value of all publicly owned uplands.[64] By November 30 each year, the Board of Trustees must provide the inventory to each state agency and local government and any other public entity that holds title to real property.[65]

Further, through a partnership with the Department of Management Services (DMS), DEP created, administers, and maintains a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district.[66] This system is called the State Owned Lands and Records Information System (SOLARIS). SOLARIS is meant to allow the Board of Trustees to perform its statutory responsibilities and DSL to conduct strategic analyses and prepare annual valuation and

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[59] Section 253.031(1), F.S.
[60] Department of Environmental Protection, *Survey & Mapping*, http://www.dep.state.fl.us/lands/survey.htm (last visited March 20, 2015).
[61] Section 253.031(2), F.S.
[62] Section 253.03(8)(a), F.S.
[63] Id.
[64] Section 253.03(8)(b), F.S.
[65] Section 253.03(8)(c), F.S.
[66] Section 216.0153(1), F.S.; Department of Environmental Protection, *Florida State Owned Lands and Records Information System (FL-SOLARIS)*, http://www.dep.state.fl.us/lands/fl_solaris.htm (last visited March 20, 2015).

disposition analyses and recommendations for all state real property assets.[67] DEP is the statewide custodian of real property information and is responsible for its accuracy.[68] SOLARIS must:

- Eliminate the need for redundant state real property information collection processes and state agency information systems;
- Reduce the need to lease or acquire additional real property as a result of an annual surplus valuation, utilization, and disposition analysis;
- Enable regional planning as a tool for cost-effective buy, sell, and lease decisions;
- Increase state revenues and maximize operational efficiencies by annually identifying those state-owned real properties that are the best candidates for surplus or disposition;
- Ensure all state real property is identified by collaborating and integrating with the DOR data as submitted by the county property appraisers; and
- Implement required functionality and processes for state agencies to electronically submit all applicable real property information using a web browser application.

**Effect of the Proposed Changes**

The PCB creates s. 253.97, F.S., to:

- Require DEP to add to SOLARIS by July 1, 2017, the following:
  - Federally owned conservation lands;
  - Lands on which the federal government holds a conservation easement; and
  - All lands on which the state holds a conservation easement;
- Require each county and city to submit to DEP, by July 1, 2017, a list of all conservation lands owned by the local government and lands on which the entity holds a permanent conservation easement. Financially disadvantaged small communities have until July 1, 2018, to submit the same information; and
- Directs DEP to complete a study by January 1, 2017, regarding the technical and economic feasibility of including the following lands in a public lands inventory:
  - All lands where local comprehensive plans, land use restrictions, zoning ordinances, or land development regulations prohibit the land from being developed or limits the amount of development to one unit per 40 acres or greater;
  - Publically and privately owned lands where development rights have been transferred;
  - Privately owned lands under a permanent conservation easement;
  - Conservation lands owned by non-profit or non-governmental organization; and
  - Lands that are part of a mitigation bank.

Lastly, the PCB directs DEP to consolidate individually titled parcels of state-owned conservation lands that are contiguous to other parcels of state-owned conservation lands under a single unified title by July 1, 2018. In order to consolidate title, the DEP may have to:

- Create new meets and bounds descriptions that encompass the contiguous properties;[69]
- Seek title opinions for each parcel; and
- Record the new deeds.

B. SECTION DIRECTORY:

Section 1. Amending s. 253.034, F.S., relating to use of state-owned lands.

Section 2. Amending s. 253.42, F.S., relating to exchanging Board of Trustee lands.

Section 3. Creating s. 253.87, F.S., relating to an inventory of federal and local conservation lands by DEP.

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[67] Id.
[68] Id.
[69] Department of Environmental Protection, Agency Analysis of 2015 State Affairs Committee PCB, p. 9 (March 9, 2015).

Section 4. Amending s. 259.105, F.S., relating to the Florida Forever Act.

Section 5. Amending s. 253.035, F.S. relating to the Acquisition and Restoration Council.

Section 6. Amends s. 373.199, F.S., relating to Florida Forever Water Management District Work Plan.

Section 7. Directing DEP to consolidate title to state owned conservation lands.

Section 8. 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:

   **Section 1. Land Management Plans**

   The PCB appears to have a negative fiscal impact on DEP by requiring additional detailed environmental assessment of state lands on a ten-year basis. DEP expects an increase in workload and an increase in costs related to the proposed new review requirements and proposed plan review every ten years.[70] DEP predicts it will require:

   - One additional full time employee (FTE) to facilitate the detailed environmental assessment of state-owned lands for possible low impact agricultural uses during the ten-year required submittal of land management plans;
   - One other personnel services (OPS) position to handle the increased workload associated with the review of land management plans by ARC; and
   - One additional FTE to process the initial low impact agricultural agreements and review and update leases to include the new agreements.[71]

   DEP estimates the total cost of the three positions to be $184,440.[72]

   Further, the PCB appears to have an indeterminate negative fiscal impact on DEP because it requires the department to assess certain lands for surplus. DEP estimates this cost to be $150,000.[73]

   **Section 3. SOLARIS**

   The PCB appears to have a negative fiscal impact on DEP by requiring the department to include all federally owned conservation lands, lands on which the federal government holds a conservation easement, and all lands on which the state holds a conservation easement into SOLARIS. DEP predicts it will require:

   - For the federal conservation lands, federal conservation easements, and state conservation easements:
     - One FTE to produce the initial data, establish federal contacts to acquire data, and to maintain the system and data;

[70] Id. at 7
[71] Id.
[72] Id.
[73] Id.

- A recurring task order with the Florida Natural Areas Inventory to use its conservation managed land data;[74]
- A new SOLARIS Conservation Lands Module for the federal and state data to be designed and implemented before the data can be loaded;

- For the county and municipality conservation lands and easements:
  - Completion of a new SOLARIS Conservation Lands Module currently underway;
  - One FTE to act as liaison to counties and municipalities to assure compliance, quality control, and maintain the county and municipal conservation data in SOLARIS.[75]

DEP estimates this cost to be $1,135,784.[76]

The PCB appears to have a negative fiscal impact on DEP by requiring the department to conduct a study and submit a report on the technical and economic feasibility of including lands with various criteria in the SOLARIS database. DEP estimates this cost to be $500,000.[77]

**Section 4. Florida Forever Rulemaking**

The PCB 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.

**Section 5. Consolidating Title to State-Owned Conservation Lands**

The PCB appears to have a negative fiscal impact on DEP by requiring the department to consolidate individually titled parcels of state-owned conservation lands that are contiguous to other parcels of state-owned conservation lands under a single unified title. DEP predicts that it will require seven OPS staff over a three year period for contract management, document management, review, mapping, and plotting. These positions will be:

- Two OPS surveyors;
- Two OPS attorneys
- Two OPS GIS/Tech; and
- One Planning Manager.[78]

DEP estimates these positions will cost $594,999 over three years.[79]

Further, DEP predicts that it must hire contracted services to perform this task. This will include:

- Contract surveyors reviewing 35,000 documents, at ten documents reviews a day, at a cost of $1,000 per day, totaling $3,500,000; and
- Processing cost for unity of title for 480 conservation units, including legal review, at approximately $2,650 per conservation unit, totaling $1,272,000.[80]

DEP estimates this total cost to consolidate title to be $5,366,997 over three years.[81]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[74] Id.
[75] Id. at 8
[76] Id.
[77] Id.
[78] Id.
[79] Id. at 9.
[80] Id.
[81] Id.

None.

2. Expenditures:

The PCB may have an indeterminate negative fiscal impact on each county and municipalities by requiring them to submit to DEP a list of all conservation lands owned by the entity and lands on which the entity holds a permanent conservation easement. Counties and municipalities will need to devote employee time and effort to collect and transmit the data to DEP.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill requires each county and municipality to submit to DEP a list of all conservation lands owned by the entity and lands on which the entity holds a permanent conservation easement. Thus, the PCB requires counties and municipalities to take actions requiring the expenditure of fund. Article VII, section 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law that requires counties or municipalities to spend funds or take action requiring the expenditures of funds. Article VII, section 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents.[82] A fiscal estimate is not available for this bill. If it is determined that this bill has more than an insignificant fiscal impact, the bill will require a two-thirds vote of the membership of each house of the Legislature for passage.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill will likely require the Board of Trustees to amend chapters 18-2 and 18-24, F.A.C., to conform to changes made in the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

[82] The total state population is estimated to be 19,507,369. University of Florida, Bureau of Economic and Business Research, Florida Estimates of Population, available at http://www.bebr.ufl.edu/data/state/Florida (last visited March 20, 2015).

A bill to be entitled

An act relating to state lands; amending s. 253.034, F.S.; providing legislative findings; revising measurable objectives for management goals to include the preservation of low-impact agriculture; requiring updated land management plans to identify conservation lands that could support low-impact agriculture and conservation lands that are no longer needed and could be disposed of; requiring that exchanges of conservation lands result in an equal or greater conservation benefit; requiring the Division of State Lands to review state-owned conservation lands and determine if such lands could support low-impact agriculture or be disposed of; requiring the division to submit a list of such lands to the Acquisition and Restoration Council; requiring the council to provide recommendations to the division and the Board of Trustees of the Internal Improvement Trust Fund; requiring that the division direct managing agencies to offer agreements for low-impact agriculture on such lands under certain conditions; providing applicability of such agreements; directing the board to dispose of such lands under certain conditions; requiring the division to review certain nonconservation lands and make recommendations to the board as to whether such lands should be retained in

public ownership or disposed of; amending s. 253.42, F.S.; providing for private lands contiguous to state-owned lands to be exchanged for a permanent conservation easement over all or a portion of the privately owned lands; authorizing the use of such lands for low-impact agricultural purposes; providing conditions for approval of such exchanges; requiring that special consideration be given to exchanges that maintain public access for recreational purposes; providing limited liability for persons maintaining such public access; providing that permanent conservation easements over privately owned lands are subject to certain inspection; creating s. 253.87, F.S.; directing the Department of Environmental Protection to include certain county, municipal, state, and federal lands in the Florida State-Owned Lands and Records Information System (SOLARIS) database and to update the database at specified intervals; requiring counties, municipalities, and financially disadvantaged small communities to submit a list of certain lands to the department by a specified date and at specified intervals; directing the department to conduct a study and submit a report to the Governor and Legislature on the technical and economic feasibility of including certain lands in the database or a similar public lands inventory; amending

s. 259.105, F.S.; deleting obsolete provisions; requiring the council to give weight and increased priority to certain projects when developing proposed rules relating to Florida Forever funding and additions to the Conservation and Recreation Lands list; providing for the appeal of decisions made by the council; authorizing the board to direct the council to include certain lands on such list under certain conditions; amending ss. 259.035 and 373.199, F.S.; conforming cross-references; directing the department to consolidate specified parcels of conservation lands under a single, unified title and legal description by a specified date; providing an effective date.

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

Section 1. Subsection (1), paragraphs (b) and (e) of subsection (5), and subsection (6) of section 253.034, Florida Statutes, are amended to read:

253.034 State-owned lands; uses.—

(1)(a) The Legislature finds that the total land area of the state is approximately 34.7 million acres and, as of January 1, 2014, approximately 3.2 million acres of conservation lands are titled in the name of the Board of Trustees of the Internal Improvement Trust Fund. Approximately 1.2 million acres of these

conservation lands, which equal approximately 3.4 percent of the total land area of the state, are uplands located above the boundary of jurisdictional wetlands.

(b) All lands acquired pursuant to chapter 259 shall be managed to serve the public interest by protecting and conserving land, air, water, and the state's natural resources, which contribute to the public health, welfare, and economy of the state. These lands shall be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources. The state's lands and natural resources shall be managed using a stewardship ethic that assures these resources will be available for the benefit and enjoyment of all people of the state, both present and future. It is the intent of the Legislature that, where feasible and consistent with the goals of protection and conservation of natural resources associated with lands held in the public trust by the Board of Trustees of the Internal Improvement Trust Fund, public land not designated for single-use purposes pursuant to paragraph (2)(b) be managed for multiple-use purposes. All multiple-use land management strategies shall address public access and enjoyment, resource conservation and protection, ecosystem maintenance and protection, and protection of threatened and endangered species, and the degree to which public-private partnerships or endowments may allow the entity with management responsibility to enhance its ability to manage

these lands. The Acquisition and Restoration Council created in s. 259.035 shall recommend rules to the board of trustees, and the board shall adopt rules necessary to carry out the purposes of this section.

(5) Each manager of conservation lands shall submit to the Division of State Lands a land management plan at least every 10 years in a form and manner prescribed by rule by the board and in accordance with the provisions of s. 259.032. Each manager of conservation lands shall also update a land management plan whenever the manager proposes to add new facilities or make substantive land use or management changes that were not addressed in the approved plan, or within 1 year of the addition of significant new lands. Each manager of nonconservation lands shall submit to the Division of State Lands a land use plan at least every 10 years in a form and manner prescribed by rule by the board. The division shall review each plan for compliance with the requirements of this subsection and the requirements of the rules established by the board pursuant to this section. All land use plans, whether for single-use or multiple-use properties, shall include an analysis of the property to determine if any significant natural or cultural resources are located on the property. Such resources include archaeological and historic sites, state and federally listed plant and animal species, and imperiled natural communities and unique natural features. If such resources occur on the property, the manager shall consult with the Division of State Lands and other

appropriate agencies to develop management strategies to protect such resources. Land use plans shall also provide for the control of invasive nonnative plants and conservation of soil and water resources, including a description of how the manager plans to control and prevent soil erosion and soil or water contamination. Land use plans submitted by a manager shall include reference to appropriate statutory authority for such use or uses and shall conform to the appropriate policies and guidelines of the state land management plan. Plans for managed areas larger than 1,000 acres shall contain an analysis of the multiple-use potential of the property, which analysis shall include the potential of the property to generate revenues to enhance the management of the property. Additionally, the plan shall contain an analysis of the potential use of private land managers to facilitate the restoration or management of these lands. In those cases where a newly acquired property has a valid conservation plan that was developed by a soil and conservation district, such plan shall be used to guide management of the property until a formal land use plan is completed.

(b) Short-term and long-term management goals shall include measurable objectives for the following, as appropriate:

1. Habitat restoration and improvement.

2. Public access and recreational opportunities.

3. Hydrological preservation and restoration.

4. Sustainable forest management.

5. Exotic and invasive species maintenance and control.

6. Capital facilities and infrastructure.

7. Cultural and historical resources.

8. Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

9. Preservation of low-impact agriculture.

(e) Land management plans are to be updated every 10 years on a rotating basis. Each updated land management plan must identify conservation lands under the plan, in part or in whole:

1. That could support low-impact agricultural uses while maintaining the land's conservation purposes.

2. That are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement.

(6) The board ~~of Trustees of the Internal Improvement Trust Fund~~ shall determine which lands titled to~~, the title to which is vested in~~ the board~~,~~ may be surplused. For conservation lands, the board shall determine whether the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in an equal or greater ~~a net positive~~ conservation benefit. For all other lands, the board shall determine whether the lands are no longer needed and may dispose of them by an affirmative vote of at

least three members.

(a) For the purposes of this subsection, all lands acquired by the state before July 1, 1999, using proceeds from Preservation 2000 bonds, the Conservation and Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board which are identified as core parcels or within original project boundaries are deemed to have been acquired for conservation purposes.

(b) For any lands purchased by the state on or after July 1, 1999, before acquisition, the board must determine which parcels must be designated as having been acquired for conservation purposes. Lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida College System may not be designated as having been purchased for conservation purposes.

(c)1. At least every 10 years, the division shall review all state-owned conservation lands titled to the board to determine whether any such lands could support low-impact agricultural uses while maintaining the land's conservation purposes. After such review, the division shall submit a list of such lands, including any additional lands identified in any updated land management plan pursuant to subparagraph (5)(e)1.,

to the council. Within 9 months after receiving the list, the council shall provide recommendations to the division as to whether any such lands could support low-impact agricultural uses while maintaining the land's conservation purposes. After considering such recommendations, the division shall direct managing agencies to offer agreements for low-impact agriculture on lands that it determines could support such agriculture while maintaining the land's conservation purposes. This section does not prohibit a managing agency from entering into agreements as otherwise provided by law. An agreement entered into pursuant to this paragraph may not exceed a term of 10 years. However, an agreement may be renewed with the consent of the division ~~as a component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager shall evaluate and indicate to the board those lands that are not being used for the purpose for which they were originally leased. For conservation lands, the council shall review and recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and recommend to the board whether such lands should be retained in public ownership or disposed of by the board.~~

2. At least every 10 years, the division shall review all state-owned conservation lands titled to the board to determine whether any such lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the

state retaining a permanent conservation easement. After such review, the division shall submit a list of such lands, including additional conservation lands identified in an updated land management plan pursuant to subparagraph (5)(e)2., to the council. Within 9 months after receiving the list, the council shall provide recommendations to the board as to whether any such lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement. After reviewing such list and considering such recommendations, if the board determines by an affirmative vote of at least three members of the board that any such lands are no longer needed for conservation purposes, the board shall dispose of the lands in fee simple or with the state retaining a permanent conservation easement.

3. At least every 10 years, the division shall review all encumbered and unencumbered nonconservation lands titled to the board and recommend to the board whether any such lands should be retained in public ownership or disposed of by the board. The board may dispose of nonconservation lands under this paragraph by a majority vote of the board.

(d) Lands titled to ~~owned by~~ the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) must be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) Before any decision by the board to surplus lands, the ~~Acquisition and Restoration~~ council shall review and make recommendations to the board concerning the request for surplusing. The council shall determine whether the request for surplusing is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands titled to ~~owned by~~ the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. ~~The provisions of~~ This paragraph does not ~~in no way~~ limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for ~~a period of~~ 45 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; governmental, judicial, or recreational centers; and affordable housing meeting the criteria of s. 420.0004(3). County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, any surplusing determination involving other governmental agencies shall be made when the board decides the best public use of the lands. Surplus lands ~~properties~~ in which

governmental agencies have not expressed an ~~no~~ interest must ~~then~~ be available for sale on the private market.

(g) The sale price of lands determined to be surplus pursuant to this subsection and s. 253.82 shall be determined by the division, which shall consider an appraisal of the property, or, if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value. The division may require a second appraisal. The individual or entity that requests to purchase the surplus parcel shall pay all costs associated with determining the property's value, if any.

1. A written valuation of land determined to be surplus pursuant to this subsection and s. 253.82, and related documents used to form the valuation or which pertain to the valuation, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

a. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the board.

b. Before expiration of the exemption, the division may disclose confidential and exempt appraisals, valuations, or valuation information regarding surplus land:

(I) During negotiations for the sale or exchange of the land.

(II) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to

facilitate closure of such effort or process.

(III) When the passage of time has made the conclusions of value invalid.

(IV) When negotiations or marketing efforts concerning the land are concluded.

2. A unit of government that acquires title to lands pursuant to this paragraph ~~hereunder~~ for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph must first allow the board ~~of trustees~~ to reacquire such lands for the price at which the board sold such lands.

(h) Parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents, as authorized by s. 253.431, for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

(i) After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or are no longer needed. The board may require an agency to release its interest in such lands. A state agency, county, or local government that

has requested the use of a property that was to be declared as surplus must secure the property under lease within 90 days after being notified that it may use such property.

(j) Requests for surplusing may be made by any public or private entity or person. All requests shall be submitted to the lead managing agency for review and recommendation to the council or its successor. Lead managing agencies have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day ~~time~~ period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph are not required to be offered to local or state governments as provided in paragraph (f).

(k) Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands before the lands were declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

(l) Notwithstanding this subsection, such disposition of land may not be made if it would have the effect of causing all

or any portion of the interest on any revenue bonds issued to lose the exclusion from gross income for federal income tax purposes.

(m) The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

(n) The board may adopt rules to administer this section which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

Section 2. Subsection (4) is added to section 253.42, Florida Statutes, to read:

253.42 Board of trustees may exchange lands.—The provisions of this section apply to all lands owned by, vested in, or titled in the name of the board whether the lands were acquired by the state as a purchase, or through gift, donation, or any other conveyance for which no consideration was paid.

(4)(a) A person who owns land contiguous to state-owned land titled to the board may submit a request directly to the board to exchange all or a portion of such state-owned land with the state retaining a permanent conservation easement for a permanent conservation easement over all or a portion of the privately owned land. State-owned land exchanged pursuant to this subsection shall be contiguous to the privately owned land upon which the state retains a permanent conservation easement. Such conservation easements shall allow the person to use the

land for low-impact agriculture. The Division of State Lands shall review such requests and provide recommendations to the board. This subsection does not apply to state-owned sovereign submerged land.

(b) The number of acres of state-owned land being exchanged must be equal to or less than the number of acres of privately held land that the person is willing to put under a permanent conservation easement.

(c) The board shall consider a request within 180 days after receipt of the request and may approve the request if:

1. At least 30 percent of the perimeter of the privately held land is bordered by state-owned land and the exchange does not create an inholding.

2. The approval does not result in a violation of the terms of a preexisting lease or agreement by the board, the department, the Department of Agriculture and Consumer Services, or the Fish and Wildlife Conservation Commission.

3. For state-owned land that was purchased for conservation purposes, the board makes a determination that the land is no longer needed for conservation purposes.

4. The approval does not conflict with any existing flowage easement.

5. The request is approved by at least three members of the board.

(d) Special consideration shall be given to a request that maintains public access for any recreational purpose allowed on

the state-owned land at the time the request is submitted to the board. A person who maintains public access pursuant to this paragraph is entitled to the limitation on liability provided in s. 375.251.

(e) Land subject to a permanent conservation easement granted pursuant to this subsection is subject to inspection by the department to ensure compliance with the terms of the permanent conservation easement.

Section 3. Section 253.87, Florida Statutes, is created to read:

253.87 Inventory of state, federal, and local government conservation lands by the Department of Environmental Protection.—

(1) By July 1, 2017, the Department of Environmental Protection shall include in the Florida State-Owned Lands and Records Information System (SOLARIS) database all federally owned conservation lands, all lands on which the federal government retains a permanent conservation easement, and all lands on which the state retains a permanent conservation easement. The department shall update the database at least every 5 years.

(2)(a) By July 1, 2017, for counties and municipalities, and by July 1, 2018, for financially disadvantaged small communities, as defined in s. 403.1838, and at least every 5 years thereafter, respectively, each county, municipality, and financially disadvantaged small community shall identify all

conservation lands that it owns in fee simple and all lands on which it retains a permanent conservation easement and submit, in a manner determined by the department, a list of such lands to the department. Within 6 months after receiving such list, the department shall add such lands to the SOLARIS database.

(3) By January 1, 2017, the department shall conduct a study and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the technical and economic feasibility of including the following lands in the SOLARIS database or a similar public lands inventory:

(a) All lands on which local comprehensive plans, land use restrictions, zoning ordinances, or land development regulations prohibit the land from being developed or limit the amount of development to one unit per 40 or more acres.

(b) All publicly and privately owned lands for which development rights have been transferred.

(c) All privately owned lands under a permanent conservation easement.

(d) All lands owned by a nonprofit or nongovernmental organization for conservation purposes.

(e) All lands that are part of a mitigation bank.

Section 4. Subsections (5) through (21) are renumbered as subsections (4) through (20), respectively, and paragraph (m) of subsection (3) and present subsections (4), (11), and (14) of section 259.105, Florida Statutes, are amended, and paragraph

(m) is added to present subsection (10) of that section, to read:

259.105 The Florida Forever Act.—

(3) Less the costs of issuing and the costs of funding reserve accounts and other costs associated with bonds, the proceeds of cash payments or bonds issued pursuant to this section shall be deposited into the Florida Forever Trust Fund created by s. 259.1051. The proceeds shall be distributed by the Department of Environmental Protection in the following manner:

~~(m) Notwithstanding paragraphs (a)-(j) and for the 2014-2015 fiscal year only:~~

~~1. Five million dollars to the Department of Agriculture and Consumer Services for the acquisition of agricultural lands through perpetual conservation easements and other perpetual less-than-fee techniques, which will achieve the objectives of Florida Forever and s. 570.71.~~

~~2. The remaining moneys appropriated from the Florida Forever Trust Fund shall be distributed only to the Division of State Lands within the Department of Environmental Protection for land acquisitions that are less-than-fee interest, for partnerships in which the state's portion of the acquisition cost is no more than 50 percent, or for conservation lands needed for military buffering or springs or water resources protection.~~

~~This paragraph expires July 1, 2015.~~

~~(4) Notwithstanding subsection (3) and for the 2014-2015 fiscal year only, the funds appropriated in section 56 of the 2014-2015 General Appropriations Act may be provided to water management districts for land acquisitions, including less-than-fee interest, identified by water management districts as being needed for water resource protection or ecosystem restoration. This subsection expires July 1, 2015.~~

(9)~~(10)~~ The Acquisition and Restoration Council shall recommend rules for adoption by the board of trustees to competitively evaluate, select, and rank projects eligible for Florida Forever funds pursuant to paragraph (3)(b) and for additions to the Conservation and Recreation Lands list pursuant to ss. 259.032 and 259.101(4). In developing these proposed rules, the Acquisition and Restoration Council shall give weight to the following criteria:

(m) The project allows the state to purchase a permanent conservation easement that would authorize existing low-impact agricultural uses to continue while achieving the intended conservation purpose.

(10)~~(11)~~ The Acquisition and Restoration Council shall give increased priority to:

(a) ~~those~~ Projects for which matching funds are available.

(b) ~~and to~~ Project elements previously identified on an acquisition list pursuant to this section that can be acquired at 80 percent or less of appraised value.

(c) Projects that can be acquired in less than fee

ownership, such as a permanent conservation easement.

(d) Projects that contribute to improving the quality and quantity of groundwater.

(e) Projects that contribute to improving the water quality and flow of springs.

(f) ~~The council shall also give increased priority to those~~ Projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions including:

1.~~(a)~~ Protecting habitat on nonmilitary land for any species found on military land that is designated as threatened or endangered, or is a candidate for such designation under the Endangered Species Act or any Florida statute;

2.~~(b)~~ Protecting areas underlying low-level military air corridors or operating areas; and

3.~~(c)~~ Protecting areas identified as clear zones, accident potential zones, and air installation compatible use buffer zones delineated by our military partners, and for which federal or other funding is available to assist with the project.

(13)~~(14)~~ An affirmative vote of at least five members of the Acquisition and Restoration Council shall be required in order to place a ~~proposed~~ project submitted pursuant to subsection (6) on the proposed project list developed pursuant to subsection (7) ~~(8)~~. Any member of the council who by family or a business relationship has a connection with any project proposed to be ranked shall declare such interest before ~~prior~~

~~to~~ voting for a project's inclusion on the list. A decision by the council to not place a project on the proposed list may be appealed directly to the Board of Trustees of the Internal Improvement Trust Fund. Pursuant to such an appeal, the board, by an affirmative vote of at least three members of the board, may direct the council to place the project on the proposed project list.

Section 5. Paragraph (c) of subsection (4) of section 259.035, Florida Statutes, is amended to read:

259.035 Acquisition and Restoration Council.—

(4)

(c) In developing or amending rules, the council shall give weight to the criteria included in s. 259.105(9) ~~259.105(10)~~. The board of trustees shall review the recommendations and shall adopt rules necessary to administer this section.

Section 6. Paragraph (i) of subsection (4) of section 373.199, Florida Statutes, is amended to read:

373.199 Florida Forever Water Management District Work Plan.—

(4) The list submitted by the districts shall include, where applicable, the following information for each project:

(i) Numeric performance measures for each project. Each performance measure shall include a baseline measurement, which is the current situation; a performance standard, which water management district staff anticipates the project will achieve;

and the performance measurement itself, which should reflect the incremental improvements the project accomplishes towards achieving the performance standard. These measures shall reflect the relevant goals detailed in s. 259.105 ~~259.105(4)~~.

Section 7. Consolidating titles to state-owned conservation lands.—As expeditiously as possible, but not later than July 1, 2018, the Department of Environmental Protection shall consolidate under a single, unified title and legal description all individually titled parcels of conservation lands solely owned by the Board of Trustees of the Internal Improvement Trust Fund that are contiguous to other parcels of conservation lands solely owned by the board.

Section 8. This act shall take effect July 1, 2015.