



State Affairs Committee

Thursday, January 21, 2016
9:00 AM
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, January 21, 2016 09:00 am
End Date and Time: Thursday, January 21, 2016 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

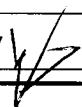
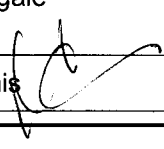
Consideration of the following bill(s):

HB 191 Regulation of Oil and Gas Resources by Rodrigues, R., Pigman
CS/HB 273 Public Records by Government Operations Subcommittee, Beshears, Kerner
HB 351 Contaminated Sites by Drake
CS/HB 497 State Designations by Agriculture & Natural Resources Subcommittee, Jenne
CS/HB 851 Onsite Sewage Treatment and Disposal Systems by Agriculture & Natural Resources Subcommittee, Drake
HB 7013 Fish and Wildlife Conservation Commission by Agriculture & Natural Resources Subcommittee, Combee
HB 7037 OGSR/Local Government Audit and Investigative Reports by Government Operations Subcommittee, Ingoglia

NOTICE FINALIZED on 01/19/2016 4:01PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 191 Regulation of Oil and Gas Resources
SPONSOR(S): Rodrigues and others
TIED BILLS: IDEN./SIM. BILLS: SB 318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	9 Y, 4 N	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 3 N	Helping	Massengale
3) State Affairs Committee		Gregory 	Camechis 

SUMMARY ANALYSIS

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program). The Program's primary responsibilities include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

The bill makes the following revisions related to the Program:

- Preempts to the state the ability to regulate any activity related to oil and gas exploration, development, production, processing, storage, and transportation;
- Voids any county, municipality, or other political subdivision's ordinance or regulation (except for zoning ordinances passed before January 1, 2015) related to oil and gas exploration, development, production, processing, storage, and transportation;
- Empowers DEP to issue a single permit that authorizes multiple Program activities;
- Requires the Division, when determining whether to issue a permit, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Allows information about past violations to be used as a basis for permit denial or imposition of permit conditions, including increased monitoring or increasing the required surety amount to up to five times the standard amount;
- Requires DEP to conduct inspections during specified Program activities;
- Defines "high-pressure well stimulation" as all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore;
- Requires a well operator to obtain a permit, pay a fee, and provide a surety to DEP prior to performing a high-pressure well stimulation;
- Requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations and provides an appropriation for the study;
- Requires certain individuals to report information relating to high-pressure well stimulations to DEP, including each chemical ingredient used in the well stimulation fluid, within 60 days of initiating the well stimulation;
- Requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed;
- Removes the requirement to receive municipal approval prior to granting an permit to drill a gas or oil well within the municipality's jurisdiction;
- Increases the maximum civil penalty for violation of any provision of the laws governing energy resources, including any rule, regulation, or order of the Division, or an oil or gas permit from \$10,000 to \$25,000 per offense; and
- Requires DEP to adopt rules to implement these changes. DEP may not issue permits to authorize high-pressure well stimulation until DEP adopts rules for high-pressure well stimulation.

The bill has a significant negative fiscal impact on the state, an indeterminate but likely insignificant fiscal impact on local governments, and an indeterminate negative fiscal impact on the private sector.

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

STORAGE NAME: h0191e.SAC.DOCX

DATE: 1/19/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Oil and Gas Production in Florida

Oil and gas production occurs in two major areas of Florida: the Sunniland Trend in South Florida and the Jay Field in the western panhandle.¹ The Sunniland Trend began producing in 1943 and is located in Lee, Hendry, Collier, and Dade counties.² The Jay Field, located in Escambia and Santa Rosa counties, began producing in 1970.³ Oil production from the two regions peaked at 48 million barrels in 1978, but steadily declined over the years, producing only 2.2 million barrels in 2014.⁴ Natural gas production decreased as well, from 52 billion cubic feet in 1978 to approximately 21 billion cubic feet in 2014.⁵ There are currently 161 oil and gas wells actively operating in Florida.⁶

The Oil and Gas Program

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).⁷ The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.⁸ DEP addresses these concerns through a system of permits and field inspections to ensure compliance.

DEP must adopt rules and issue orders to implement and enforce the Program.⁹ The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.¹⁰ DEP must adopt rules and orders for the following purposes:

- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs;
- To prevent the alteration of the sheet flow of water in any area;
- To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations;
- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another;

¹ Jacqueline M. Lloyd, *Florida Geological Survey Information Circular No. 107*, June 1991, available at <http://ufdcweb1.uflib.ufl.edu/UF00001168/00001/3x>.

² *Id.*

³ *Id.*

⁴ DEP, *Annual Production Reports*, available at http://www.dep.state.fl.us/water/mines/oil_gas/data.htm (last visited September 17, 2015).

⁵ *Id.*

⁶ Email from Amanda Marsh, Office of Legislative Affairs, DEP, RE: Oil and Gas Info (October 14, 2015).

⁷ The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and chs. 62C-25 through 62C-30, F.A.C.

⁸ Section 377.06, F.S.

⁹ Section 377.22(2), F.S.

¹⁰ *Id.*

- To prevent the intrusion of water into an oil or gas stratum from a separate stratum;
- To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation;
- To require and carry out a reasonable program of monitoring or inspection of all drilling operations, producing wells, or injecting wells, including regular inspections by division personnel;
- To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records;
- To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs;
- To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.
- To require the operation of wells with efficient gas-oil ratio, and to fix such ratios;
- To prevent "blowouts," "caving," and "seepage;"
- To prevent fires;
- To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities;
- To regulate the "shooting," perforating and chemical treatment of wells;
- To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations;
- To regulate gas cycling operations;
- To regulate the storage and recovery of gas injected into natural gas storage facilities;
- To, if necessary, determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state;
- To require certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product;
- To regulate the spacing of wells and to establish drilling units;
- To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage;
- To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas;
- To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state; and
- To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.¹¹

Permitting

DEP possesses the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.¹²

¹¹ Id.

¹² Section 377.242(1), F.S.

- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.¹³
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.¹⁴

Before any geophysical operation in search of oil, gas, or minerals, the person desiring to conduct the operation must apply for a permit from DEP and pay a processing fee.¹⁵ Geophysical operations consist of using various methods to locate geologic structures in the ground that could contain oil or gas.¹⁶ These methods include gravity surveys, magnetic surveys, and seismic surveys.¹⁷ The industry uses seismic surveys as its primary tool for locating areas containing oil or gas.¹⁸ These surveys consist of using explosives or heavy vibrations to create sound pulses in the ground that reflect off geologic structures and are then captured by specialized microphones.¹⁹ The surveyors use the collected data to establish drilling targets.

After a drilling target is established, a person who would like to drill a well in search of oil or gas or drill a well to inject gas into and recover gas from a natural gas storage reservoir must notify the Division, pay a fee,²⁰ and obtain a separate permit authorizing the drilling before the drilling commences.²¹ These drilling permits are valid for one year and may be renewed for an additional year provided the permit holder does not request any substantive changes.²² After a well is drilled, a person must obtain a separate operating permit and pay a fee²³ before using the well for its intended purpose, such as producing oil, disposing of saltwater, or injecting fluids for pressure maintenance.²⁴ An operating permit is valid for the life of the well, but both the well and permit must be re-certified every five years.²⁵ A person must obtain a separate permit before they store gas in or recover gas from a natural gas storage reservoir.²⁶

When evaluating a permit application, DEP must consider:

- The nature, character, and location of the lands involved; and whether the lands are rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future;
- The nature, type, and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized;
- The proven or indicated likelihood of the presence of oil, gas, or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis; and
- For activities and operations concerning a natural gas storage facility, whether the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.²⁷

¹³ Section 377.242(2), F.S.

¹⁴ Section 377.242(3), F.S.

¹⁵ Section 377.2408(1), F.S.

¹⁶ Department of Environmental Protection, *Oil & Gas: Geophysical Prospecting*, available at

http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf (last visited September 16, 2015).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The fee to apply for a drilling permit is currently \$2,000. Rule 62C-26.003(8), F.A.C.

²¹ Sections 377.24 and 377.2407, F.S.

²² Rule 62C-26.007(4), F.A.C.

²³ The fee to apply for an operating permit is currently \$2,000. Rule 62C-26.008(3), F.A.C.

²⁴ Rule 62C-26.008, F.A.C.

²⁵ *Id.*

²⁶ Section 377.24(1), F.S.

²⁷ Section 377.241, F.S.

DEP must weigh these criteria and balance environmental interests against the applicant's right to explore for oil.²⁸

DEP may not permit to drill a well in search of oil or gas:

- In Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;²⁹
- In bays or estuaries;³⁰
- Within one mile of coastline;³¹
- Within 1 mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;³² and
- Within 1 mile inland from Gulf, Atlantic, any bay, or any estuary 1 mile of any freshwater lake, river, or stream unless the DEP is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.³³

Payment of Surety

Before DEP may grant a permit, the permit applicant must provide surety that the exploration, drilling, or production activity requested in the application will be conducted in a safe and environmentally compatible manner.³⁴ An applicant for a drilling, production, or injection well permit or a geophysical permit may provide the following types of surety to meet this requirement:

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state; or
- A surety in the form of an irrevocable letter of credit guaranteed by an acceptable financial institution.³⁵

Individuals conducting geophysical operations must provide a surety of \$25,000 per field crew or \$100,000 per operation.³⁶ For wells, the amount of the required surety varies based on the depth of the well drilled and whether the well becomes an operating well.³⁷ Currently, well drilled between zero and 9,000 feet deep require an initial surety of \$50,000, and a well drilled at 9,001 feet deep or more requires a \$100,000 surety.³⁸ If a drilled well becomes an operating well, the required surety for the well is twice the initial surety amount.³⁹ In lieu of furnishing separate securities for each well, an owner or operators may provide a blanket bond of \$1,000,000, which can cover up to ten wells.⁴⁰ When all drilling, exploration, and production activities have ceased and permit conditions satisfied, DEP releases the security.⁴¹

Alternatively, an applicant for a drilling, production, or injection well permit, or a permittee who intends to continue participating in long-term production activities, may meet the surety requirement by paying an annual fee to the Minerals Trust Fund based on the following amounts:

- For the first year, or part of a year, the fee is \$4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is \$1,500 per permitted well.⁴²

²⁸ Coastal Petroleum Co. v. Florida Wildlife Federation, Inc., 766 So. 2d 226, 228 (Fla. 1st DCA 1999).

²⁹ Sections 377.24(9) and 377.242(1)(a)5., F.S.

³⁰ Section 377.242(1)(a)1., F.S.

³¹ Section 377.242(1)(a)2., F.S.

³² Section 377.242(1)(a)3., F.S.

³³ Section 377.242(1)(a)4., F.S.

³⁴ Section 377.2425(1), F.S.

³⁵ *Id.*

³⁶ Rule 62C-26.007(5), F.A.C.

³⁷ Rule 62C-26.002(1), F.A.C.

³⁸ Rule 62C-26.002(2), F.A.C.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Rule 62C-26.002(7), F.A.C.

⁴² Section 377.2425(1)(b), F.S.

The maximum fee that an applicant or permittee may be required to pay into the Minerals Trust Fund is \$30,000 per calendar year, regardless of the number of permits applied for or in effect.⁴³

Inspections

DEP monitors and inspects drilling operations, producing wells, or injecting wells.⁴⁴ Division staff working in the field offices inspect all permitted activities. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.⁴⁵

Penalties

A person who violates any statute, rule, regulation, order, or permit of the Program is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property of the state.⁴⁶ Further, civil penalty not to exceed \$10,000 per offense may be imposed on such violators.⁴⁷ Each day during any portion of which a violation occurs constitutes a separate offense.⁴⁸ These penalties also apply to a person who refuses inspection by the Division.⁴⁹

Well Stimulation

Underground oil and gas often forms in certain rock formations resistant to conventional methods of drilling. Some of these rock formations are less permeable than traditional reservoirs of oil and gas. A traditional reservoir of oil and/or gas will be permeable enough to naturally allow the migration of oil and/or gas out of the reservoir rock. However, the decreased permeability of some reservoir rock formations traps oil and gas within the reservoir. The most common types of rock formations trapping oil and gas in this fashion are shale, sandstone, and methane coalbeds.⁵⁰ Until recently, these formations rarely produced oil or gas due to their lack of permeability. The development of horizontal drilling, combined with hydraulic fracturing, has made oil and gas production from these formations more feasible.⁵¹

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.⁵² Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

Hydraulic Fracturing

Hydraulic fracturing consists of using fluid and material to create or restore fractures in a rock formation to stimulate production. A hydraulic fracturing well is first drilled vertically. Then the well is drilled horizontally directly into the reservoir rock. The fracturing fluid and materials are pressurized and

⁴³ Id.

⁴⁴ Section 377.22(2)(g), F.S.

⁴⁵ Section 377.242, F.S.

⁴⁶ Section 377.37(1)(a), F.S.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ See generally Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547.

⁵¹ Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Final Rule, 80 Fed. Reg. 16130 – 16131 (proposed March 26, 2015)(to be codified at 43 C.F.R. 3160).

⁵² Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

released through small perforations in the well casing. The pressurized mixture causes the rock layer to fracture. The fissures are held open by the proppant to allow natural gas and oil to flow into and out of the well. Fractured rock formations may be refractured to allow for continued flow of any remaining oil and gas. This process allows for future productivity of older wells.⁵³

The composition of a fracturing fluid varies with the nature of the formation, but typically contains large amounts of water, a proppant to keep the fractures open (typically sand), and chemical additives. Each hydraulic fracturing well can require between one and seven million gallons of water. The chemical additives include a friction reducer, biocides (to kill bacteria), a scale inhibitor, surfactants, and breakers.⁵⁴ Scale inhibitors prevent the buildup of scale⁵⁵ on the drilling equipment. The breakers and friction reducer help to transport the proppants into the fracture, as well as remove them. The surfactants help control water's reaction with other fluids (in this case, oil and/or gas). A typical fracture treatment will use between three and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured; most often, either 10 or 11 are used. These chemicals are selected from a list of over 250 chemicals.⁵⁶ The chemicals typically make up between 1 percent and 2 percent of the hydraulic fracturing fluid, by weight.⁵⁷

Acid Fracturing

Acid fracturing, also known as acidizing, is most often used in limestone formations and other carbonate formations because the permeability of limestone varies and is too complex for conventional hydraulic fracturing. Carbonate formations can be dissolved by acid. Acid fracturing is similar to hydraulic fracturing with some differences. A fluid is still injected at fracturing pressures, but it also includes a diluted acid, either hydrochloric acid or formic acid, to "etch" channels into the rock formation. The channels created through the rock formation can either let oil and gas escape as is, or can also be propped open with sand, as with hydraulic fracturing. "The effective fracture length is a function of the type of acid used, the acid reaction rate, and the fluid loss from the fracture into the formation."⁵⁸

Well Stimulation in Florida

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.⁵⁹ A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."⁶⁰ Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Both hydraulic fracturing and acid fracturing have been utilized in Florida. According to DEP, the last hydraulic fracturing on record was conducted in the Jay Field in 2003.⁶¹ Acid fracturing was used for

⁵³ See generally Wiseman & Francis Gradijan.

⁵⁴ Id.

⁵⁵ "Scale" is inorganic soluble salts that form when incompatible types of water are mixed. Scale buildup can cause costly damage to equipment parts.

⁵⁶ For a list of the chemicals most often used, see *What Chemicals Are Used*, FRAC FOCUS, <https://fracfocus.org/chemical-use/what-chemicals-are-used> (last visited October 28, 2015).

⁵⁷ 80 Fed. Reg. 16131.

⁵⁸ The Society of Petroleum Engineers, *Continuous Improvements in Acid Fracturing at Lake Maracaibo*, J. Petroleum Tech. 54 (2006), available at http://www.slb.com/~media/Files/stimulation/industry_articles/200607_cont_imp.pdf.

⁵⁹ Rule 62C-29.006(1), F.A.C.

⁶⁰ Rule 62C-25.002(61), F.A.C.

⁶¹ DEP, *Frequent Questions about the Oil and Gas Permitting Process*, available at http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf, (last visited September 16, 2015).

the first time in Florida in Collier County in 2013, but the operation was halted by a cease and desist order from DEP based on concerns about groundwater contamination.⁶²

Disclosure of Well Stimulation Chemicals

In March 2015, the Bureau of Land Management (BLM), part of the U.S. Department of the Interior, published its final rule that requires disclosures about chemicals used in hydraulic fracturing on federal and Indian lands.⁶³ After hydraulic fracturing is complete, BLM requires the driller to provide a description of the base fluid and each additive in the hydraulic fracturing fluid.⁶⁴ Some commenters on the rule requested that BLM only require disclosure of chemicals required for disclosure on Manage Materials Safety Data Sheets.⁶⁵ However, BLM determined that other chemicals used during hydraulic fracturing might be harmful to humans in an environmental setting, and therefore, disclosure would be required.⁶⁶ BLM does not require chemical disclosure prior to drilling because operators often change chemical composition after permit approval in response to chemical availability, change in vendor, and unexpected geological conditions.⁶⁷ Operators may request that chemical information not be disclosed to the public.⁶⁸ These companies have traditionally kept the chemical composition confidential to preserve a competitive advantage.⁶⁹

Wyoming and several other states challenged BLM's rule stating the agency lacked the power to regulate the activity.⁷⁰ A federal judge issued a preliminary injunction barring implementation of the rule and the case is currently awaiting resolution.⁷¹

Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well.⁷² These provisions vary widely, but generally indicate: (1) which parties must disclose information about chemical additives and whether these disclosures must be made to the public or a state agency; (2) what information about chemicals added to a hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic fracturing fluid and the additives that are combined with it; (3) what protections, if any, will be given to trade secrets; and (4) at what time disclosure must be made in relation to when fracturing takes place.⁷³

Local Regulation of Oil and Gas Production

In certain instances, DEP may not issue a permit without specified approval. DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;⁷⁴

⁶² DEP, *Collier Oil Drilling*, http://www.dep.state.fl.us/secretary/oil/collier_oil.htm (last visited September 16, 2015).

⁶³ 80 Fed. Reg. 16128; *See also* Bureau of Land Management, *Interior Department Releases Final Rule to Support Safe, Responsible Hydraulic Fracturing Activities on Public and Tribal Lands*,

http://www.blm.gov/wo/st/en/info/newsroom/2015/march/nr_03_20_2015.html, (last visited September 16, 2015).

⁶⁴ 80 Fed. Reg. 16220.

⁶⁵ 80 Fed. Reg. 16170.

⁶⁶ *Id.*

⁶⁷ 80 Fed. Reg. 16149.

⁶⁸ 80 Fed. Reg. 16221.

⁶⁹ 29 J. Land Use & Envtl. L. at 35.

⁷⁰ Casper Star Tribune, Benjamin Storrow, *Federal judge issues stay on BLM fracking rule*, http://trib.com/business/energy/federal-judge-issues-stay-on-blm-fracking-rule/article_7e14957f-11d9-5120-b1d9-e86bf382bb1c.html (last visited September 15, 2015).

⁷¹ *Id.* *See also* Amy Harder Wall Street Journal, *Federal Court Blocks Obama Administration Fracking Rule*, <http://www.wsj.com/articles/federal-court-blocks-obama-administration-hydraulic-fracturing-rule-1443641565> (last visited September 30, 2015).

⁷² Brandon J. Murrill and Adam Vann, *Hydraulic Fracturing: Chemical Disclosure Requirements*, Congressional Research Service (June 19, 2012), available at <http://fas.org/sgp/crs/misc/R42461.pdf> (last visited September 16, 2015).

⁷³ *Id.*

⁷⁴ Section 377.24(5), F.S.

- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;⁷⁵ or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.⁷⁶

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund (BOT), it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;⁷⁷
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;⁷⁸
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;⁷⁹ or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.⁸⁰

According to DEP, no counties or municipalities currently operate oil and gas permitting programs. However, some municipalities have banned hydraulic fracturing in their jurisdictions.⁸¹

Effect of Proposed Changes

State Preemption

The bill amends s. 377.06, F.S., to preempt counties, municipalities, or other political subdivisions from regulating any activity related to oil and gas exploration, development, production, processing, storage, and transportation. Further, the bill voids any county, municipality, or other political subdivision's ordinance or regulation related to oil and gas exploration, development, production, processing, storage, and transportation. Counties and municipalities may, however, enforce zoning ordinances adopted before January 1, 2015.

Permits for Oil and Gas Exploring, Drilling, and Extracting

The bill adds s. 377.241(6), F.S., to require the Division, when determining whether to issue a permit for activities related to oil and gas, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state. This information may be used as a basis for permit denial or imposition of specific permit conditions, including increased monitoring, or increasing the amount of the required surety to up to five times the standard amount. The bill amends s. 377.22(2), F.S., to authorize DEP to adopt rules to implement this requirement.

⁷⁵ Section 377.24(6), F.S.

⁷⁶ Section 377.24(7), F.S.

⁷⁷ Section 253.61(1)(a), F.S.

⁷⁸ Section 253.61(1)(b), F.S.

⁷⁹ Section 253.61(1)(c), F.S.

⁸⁰ Section 253.61(1)(d), F.S.

⁸¹ Bonita Springs: <http://www.news-press.com/story/news/local/bonita-springs/2015/07/15/crowd-crams-bonita-city-hall-ahead-of-fracking-vote/30182897/> (last visited September 18, 2015).

Further, the bill amends s. 377.24(1), F.S., to empower DEP, when issuing a permit for activities related to oil and gas drilling and extracting, to authorize multiple activities in a single permit.

Inspections

The bill amends s. 377.22(2)(g), F.S., to require DEP's rules and orders to require inspections during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The bill amends s. 377.242, F.S., to require each permit to contain an agreement that the permit holder will not prevent inspections during these activities.

High-Pressure Well Stimulation Permits

The bill amends s. 377.24, F.S., to specifically authorize DEP to issue permits for performance of a high-pressure well stimulation. The bill requires DEP to issue orders and adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations.

The bill amends s. 377.19, F.S., to define "high-pressure well stimulation" as a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore.

The bill amends s. 377.24, F.S., to impose on high-pressure well stimulations the same permitting requirements that apply to drilling an oil or gas well. Thus, a person who would like to perform a high-pressure well stimulation must first apply for and obtain a permit from DEP that authorizes the activity and must also pay a fee not to exceed the actual cost of processing and inspecting for each well. While the permitting criteria for all oil and gas permits will now apply to high-pressure well stimulation permits, the bill also creates additional criteria applicable to permits for high-pressure well stimulation.

Specifically, the bill amends s. 377.241, F.S., to direct the Division, when issuing a permit, to consider whether the high-pressure well stimulation is designed to ensure that:

- The groundwater through which the well will be or has been drilled is not contaminated by the high-pressure well stimulation; and
- The high-pressure well stimulation is consistent with the public policy of the state.

The bill also amends s. 377.2425, F.S., to require that high-pressure well stimulation permit applicants or operators provide surety to DEP that the activity will be conducted in a safe and environmentally compatible manner before DEP may grant a permit. The surety requirement for high-pressure well stimulation is the same as the surety required for other oil and gas permits.

The bill prohibits DEP from issuing permits for high-pressure well stimulation until rules for high-pressure well stimulation are adopted.

Study on High-Pressure Well Stimulation

The bill creates s. 377.2436, F.S., to require DEP to conduct a study on high-pressure well stimulation that:

- Evaluates the underlying geologic features present in the counties where oil wells have been permitted and analyzes the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features;
- Evaluates the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources, including an assessment of the potential impacts on drinking water resources, identification of the main factors affecting the severity and frequency of

impacts, and an analysis of the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards;

- Reviews and evaluates the potential for groundwater contamination from conducting high-pressure well stimulation under wells that have been previously abandoned and plugged and identifies a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation; and
- Reviews and evaluates the ultimate disposition of well stimulation fluids after use in well stimulation processes.

The bill specifies that DEP must continue conventional oil and gas business operations during the performance of the study and prohibits a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the study. The bill provides that the study is subject to independent scientific peer review.

The bill requires the findings of the study to be posted on DEP's website and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017.

The bill appropriates \$1 million in nonrecurring funds from the General Revenue Fund to DEP for the purpose of performing the study.

High-Pressure Well Stimulation Chemical Disclosure Registry

The bill creates s. 377.45, F.S., to require DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. The bill requires a service provider, vendor, or well owner or operator to report to DEP, at a minimum, the following information:

- The name of the service provider, vendor, or well owner or operator;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The API (American Petroleum Institute) number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation;
- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2)⁸² and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed; and
- The trade or common name and the CAS registry number for each chemical ingredient.

DEP must report the information listed above to FracFocus, excluding any information subject to ch. 688, F.S., which relates to trade secrets. If FracFocus cannot accept and make publicly available any of the required information, the bill requires DEP to post the information on its website, excluding any information subject to ch. 688, F.S., which relates to trade secrets.

The bill requires a service provider, vendor, or well owner or operator to report the required information to DEP within 60 days after the initiation of the high-pressure well stimulation for each well on which it is performed. The service provider, vendor, or well owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

⁸² 29 C.F.R. s. 1910.1200(g)(2) specifies the information that must be included in reports that chemical manufacturers and importers are required to prepare for the purpose of alerting employers and employees to chemical hazards in the workplace. These are called Material Safety Data Sheets.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

The bill requires DEP to adopt rules to implement the chemical disclosure requirements.

Local Regulation of Oil and Gas Production

The bill removes subsection (5) from s. 377.24, F.S., which prohibits DEP from issuing permits within the corporate limits of a municipality without a resolution approving the permit from the governing authority.

Penalties

The bill amends s. 377.37, F.S., to increase the maximum civil penalty that may be imposed on a person who violates any provision of ch. 377, F.S., or any rule, regulation, or order of the Division made under the chapter or who violates the terms of an oil or gas permit from \$10,000 to \$25,000 per offense. Each day during any portion of which a violation occurs constitutes a separate offense.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 377.06, F.S., preempting the regulation of all matters relating to the exploration, development, production, processing, storage, and transportation of oil and gas.
- Section 2.** Amends s. 377.19, F.S., relating to definitions used in ch. 377, F.S.
- Section 3.** Amends s. 377.22, F.S., revising the rulemaking authority of DEP.
- Section 4.** Amends s. 377.24, F.S., relating to oil and gas well drilling permits.
- Section 5.** Amends s. 377.241, F.S., relating to criteria for issuance of permits.
- Section 6.** Amends s. 377.242, F.S., relating to permits for oil and gas drilling, exploration, and extraction.
- Section 7.** Amends s. 377.2425, F.S., relating to providing a surety for oil and gas production.
- Section 8.** Creates s. 377.2436, F.S., relating to a study on high-pressure well stimulation.
- Section 9.** Amends s. 377.37, F.S., relating to penalties for oil and gas for oil and gas law violations.
- Section 10.** Creates s. 377.45, F.S., relating to disclosure of high-pressure well stimulation chemicals.
- Section 11.** Amends s. 377.07, F.S., conforming provisions to changes made by the act.
- Section 12.** Amends s. 377.10, F.S., conforming provisions to changes made by the act.
- Section 13.** Amends s. 377.243, F.S., conforming provisions to changes made by the act.
- Section 14.** Amends s. 377.244, F.S., conforming provisions to changes made by the act.
- Section 15.** Provides an appropriation.

Section 16. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state because it requires oil and gas well operators to pay a permit fee before performing a high-pressure well stimulation and provide financial surety that performance will be conducted in a safe and environmentally compatible manner. Options of surety include cash deposit to the Minerals Trust Fund, a surety bond or an irrevocable letter of credit in an amount as provided by rule and guaranteed by an acceptable financial institution. According to DEP, the total fiscal impact of the permit fees and surety requirement is indeterminate at this time since the permit fee would be established during the rulemaking process and it is unknown how many permits would be sought for high pressure well stimulations.⁸³

The bill may also have an indeterminate positive fiscal impact on the state because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense, which would also be deposited in the Minerals Trust Fund. According to DEP, the fiscal impact from the increase in penalties is indeterminate because it is unknown how many violations triggering the payment of fines would occur in the future.⁸⁴

2. Expenditures:

The bill has a significant negative fiscal impact on the state because it requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations. According to DEP, this study will cost approximately \$1 million.⁸⁵ The bill provides \$1 million to DEP in nonrecurring funds from the General Revenue Fund for the purpose of performing the study.

According to DEP, the cost of rulemaking can be absorbed within the existing department's budget.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

2. Expenditures:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it requires oil and gas well operators to pay a permit fee (to be determined by DEP), associated permit application preparation costs, and provide financial surety before performing a high-pressure well stimulation.

⁸³ Email from Amanda Marsh, Legislative Specialist, Department of Environmental Protection, Fwd: HB 191 Analysis (Nov. 25, 2015).

⁸⁴ Id.

⁸⁵ According to an email from DEP staff received on March 23, 2015.

The bill may also have an indeterminate negative fiscal impact on the private sector because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18(b) of the Florida Constitution may apply because the bill may reduce the authority of counties and municipalities to raise total aggregate revenues as such authority existed on February 1, 1989, by prohibiting them from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority. According to DEP, no counties or municipalities currently operate such permitting programs. Therefore, an exemption to the mandates provision may apply because the fiscal impact of the reduced authority is likely insignificant.

An exception to the mandates provision may also apply because the bill applies to all persons similarly situated. However, the Legislature would have to make a formal determination that the bill fulfills an important state interest.

If the exemption and exception do not apply and the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations. DEP may not issue permits for high-pressure well stimulation until it adopts rules for high-pressure well stimulation. The bill also requires DEP to adopt rules to evaluate previous violations of permit applicants, conduct specific inspection activities, require reports for high-pressure well stimulations, and require chemical disclosure to FracFocus for high-pressure well stimulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

27 Management to give consideration to and be guided by
 28 certain additional criteria when issuing permits;
 29 amending s. 377.242, F.S.; authorizing the department
 30 to issue permits for the performance of a high-
 31 pressure well stimulation; revising permit
 32 requirements that permit holders agree not to prevent
 33 division inspections; amending s. 377.2425, F.S.;

34 requiring an applicant or operator to provide surety
 35 that performance of a high-pressure well stimulation
 36 will be conducted in a safe and environmentally
 37 compatible manner; creating s. 377.2436, F.S.;

38 directing the department to conduct a study on high-
 39 pressure well stimulation; providing study criteria;
 40 requiring the study to be submitted to the Governor
 41 and Legislature; amending s. 377.37, F.S.; increasing
 42 the maximum amount of a civil penalty; creating s.
 43 377.45, F.S.; requiring the department to designate
 44 the national chemical registry as the state's
 45 registry; requiring service providers, vendors, and
 46 well owners or operators to report certain information
 47 to the department; requiring the department to report
 48 certain information to the national chemical registry;
 49 providing applicability; requiring the department to
 50 adopt rules; amending ss. 377.07, 377.10, 377.243, and
 51 377.244, F.S.; conforming provisions; providing an
 52 appropriation; providing an effective date.

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

Section 1. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas; preemption.—

(1) It is ~~hereby declared~~ the public policy of this state to conserve and control the natural resources of oil and gas in this state, and the products made from oil and gas in this state, ~~to~~ to prevent waste of natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the natural resources lie, ~~of~~ the owners and producers of oil and gas resources and the products made from oil and gas, and ~~of~~ others interested in these resources and products; and to safeguard the health, property, and public welfare of the residents of this state and other interested persons ~~and for all purposes indicated by the provisions in this section.~~

(2) ~~Further,~~ It is the public policy of this state ~~declared~~ that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas, ~~to~~ to makes gas more readily available to the domestic, commercial, and industrial consumers of this state, ~~to~~ to and allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods

79 of peak demand. It is not the intention of this section to
 80 limit, restrict, or modify in any way the provisions of this
 81 law.

82 (3) The Legislature declares that all matters relating to
 83 the regulation of the exploration, development, production,
 84 processing, storage, and transportation of oil and gas are
 85 preempted to the state, to the exclusion of all existing and
 86 future ordinances or regulations relating thereto adopted by any
 87 county, municipality, or other political subdivision of the
 88 state. Any such existing ordinance or regulation is void. A
 89 county or municipality may, however, enforce an existing zoning
 90 ordinance adopted before January 1, 2015, if the ordinance is
 91 otherwise valid.

92 Section 2. Section 377.19, Florida Statutes, is amended to
 93 read:

94 377.19 Definitions.—As used in ss. 377.06, 377.07, and
 95 377.10-377.45 ~~377.10-377.40~~, the term:

96 (1) "Completion date" means the day, month, and year that
 97 a new productive well, a previously shut-in well, or a
 98 temporarily abandoned well is completed, repaired, or
 99 recompleted and the operator begins producing oil or gas in
 100 commercial quantities.

101 (2) "Department" means the Department of Environmental
 102 Protection.

103 (3) "Division" means the Division of Water Resource
 104 Management of the Department of Environmental Protection.

105 (4) "Field" means the general area that is underlaid, or
 106 appears to be underlaid, by at least one pool. The term includes
 107 the underground reservoir, or reservoirs, containing oil or gas,
 108 or both. The terms "field" and "pool" mean the same thing if
 109 only one underground reservoir is involved; however, the term
 110 "field," unlike the term "pool," may relate to two or more
 111 pools.

112 (5) "Gas" means all natural gas, including casinghead gas,
 113 and all other hydrocarbons not defined as oil in subsection (16)
 114 ~~(15)~~.

115 (6) "High-pressure well stimulation" means all stages of a
 116 well intervention performed by injecting fluids into a rock
 117 formation at high pressure that exceeds the fracture gradient of
 118 the rock formation in order to propagate fractures in such
 119 formation to increase production at an oil or gas well by
 120 improving the flow of hydrocarbons from the formation into the
 121 wellbore. The term does not include well stimulation or
 122 conventional workover procedures that may incidentally fracture
 123 the formation near the wellbore.

124 (7)~~(6)~~ "Horizontal well" means a well completed with the
 125 wellbore in a horizontal or nearly horizontal orientation within
 126 10 degrees of horizontal within the producing formation.

127 (8)~~(7)~~ "Illegal gas" means gas that has been produced
 128 within the state from any well or wells in excess of the amount
 129 allowed by any rule, regulation, or order of the division, as
 130 distinguished from gas produced within the State of Florida from

131 | a well not producing in excess of the amount so allowed, which
 132 | is "legal gas."

133 | (9)~~(8)~~ "Illegal oil" means oil that has been produced
 134 | within the state from any well or wells in excess of the amount
 135 | allowed by rule, regulation, or order of the division, as
 136 | distinguished from oil produced within the state from a well not
 137 | producing in excess of the amount so allowed, which is "legal
 138 | oil."

139 | (10)~~(9)~~ "Illegal product" means a product of oil or gas,
 140 | any part of which was processed or derived, in whole or in part,
 141 | from illegal gas or illegal oil or from any product thereof, as
 142 | distinguished from "legal product," which is a product processed
 143 | or derived to no extent from illegal oil or illegal gas.

144 | (11)~~(10)~~ "Lateral storage reservoir boundary" means the
 145 | projection up to the land surface of the maximum horizontal
 146 | extent of the gas volume contained in a natural gas storage
 147 | reservoir.

148 | (12)~~(11)~~ "Native gas" means gas that occurs naturally
 149 | within this state and does not include gas produced outside the
 150 | state, transported to this state, and injected into a permitted
 151 | natural gas storage facility.

152 | (13)~~(12)~~ "Natural gas storage facility" means an
 153 | underground reservoir from which oil or gas has previously been
 154 | produced and which is used or to be used for the underground
 155 | storage of natural gas, and any surface or subsurface structure,
 156 | or infrastructure, except wells. The term also includes a right

157 or appurtenance necessary or useful in the operation of the
 158 facility for the underground storage of natural gas, including
 159 any necessary or reasonable reservoir protective area as
 160 designated for the purpose of ensuring the safe operation of the
 161 storage of natural gas or protecting the natural gas storage
 162 facility from pollution, invasion, escape, or migration of gas,
 163 or any subsequent extension thereof. The term does not mean a
 164 transmission, distribution, or gathering pipeline or system that
 165 is not used primarily as integral piping for a natural gas
 166 storage facility.

167 (14)~~(13)~~ "Natural gas storage reservoir" means a pool or
 168 field from which gas or oil has previously been produced and
 169 which is suitable for or capable of being made suitable for the
 170 injection, storage, and recovery of gas, as identified in a
 171 permit application submitted to the department under s.
 172 377.2407.

173 (15)~~(14)~~ "New field well" means an oil or gas well
 174 completed after July 1, 1997, in a new field as designated by
 175 the Department of Environmental Protection.

176 (16)~~(15)~~ "Oil" means crude petroleum oil and other
 177 hydrocarbons, regardless of gravity, which are produced at the
 178 well in liquid form by ordinary production methods, and which
 179 are not the result of condensation of gas after it leaves the
 180 reservoir.

181 (17)~~(16)~~ "Oil and gas" has the same meaning as the term
 182 "oil or gas."

183 | (18)~~(17)~~ "Oil and gas administrator" means the State
 184 | Geologist.

185 | (19)~~(18)~~ "Operator" means the entity who:

186 | (a) Has the right to drill and to produce a well; or

187 | (b) As part of a natural gas storage facility, injects, or
 188 | is engaged in the work of preparing to inject, gas into a
 189 | natural gas storage reservoir; or stores gas in, or removes gas
 190 | from, a natural gas storage reservoir.

191 | (20)~~(19)~~ "Owner" means the person who has the right to
 192 | drill into and to produce from any pool and to appropriate the
 193 | production for the person or for the person and another, or
 194 | others.

195 | (21)~~(20)~~ "Person" means a natural person, corporation,
 196 | association, partnership, receiver, trustee, guardian, executor,
 197 | administrator, fiduciary, or representative of any kind.

198 | (22)~~(21)~~ "Pool" means an underground reservoir containing
 199 | or appearing to contain a common accumulation of oil or gas or
 200 | both. Each zone of a general structure which is completely
 201 | separated from any other zone on the structure is considered a
 202 | separate pool as used herein.

203 | (23)~~(22)~~ "Producer" means the owner or operator of a well
 204 | or wells capable of producing oil or gas, or both.

205 | (24)~~(23)~~ "Product" means a commodity made from oil or gas
 206 | and includes refined crude oil, crude tops, topped crude,
 207 | processed crude petroleum, residue from crude petroleum,
 208 | cracking stock, uncracked fuel oil, fuel oil, treated crude oil,

209 residuum, gas oil, casinghead gasoline, natural gas gasoline,
 210 naphtha, distillate, condensate, gasoline, waste oil, kerosene,
 211 benzine, wash oil, blended gasoline, lubricating oil, blends or
 212 mixtures of oil with one or more liquid products or byproducts
 213 derived from oil or gas, and blends or mixtures of two or more
 214 liquid products or byproducts derived from oil or gas, whether
 215 hereinabove enumerated or not.

216 (25)~~(24)~~ "Reasonable market demand" means the amount of
 217 oil reasonably needed for current consumption, together with a
 218 reasonable amount of oil for storage and working stocks.

219 (26)~~(25)~~ "Reservoir protective area" means the area
 220 extending up to and including 2,000 feet surrounding a natural
 221 gas storage reservoir.

222 (27)~~(26)~~ "Shut-in bottom hole pressure" means the pressure
 223 at the bottom of a well when all valves are closed and no oil or
 224 gas has been allowed to escape for at least 24 hours.

225 (28)~~(27)~~ "Shut-in well" means an oil or gas well that has
 226 been taken out of service for economic reasons or mechanical
 227 repairs.

228 (29)~~(28)~~ "State" means the State of Florida.

229 (30)~~(29)~~ "Temporarily abandoned well" means a permitted
 230 well or wellbore that has been abandoned by plugging in a manner
 231 that allows reentry and redevelopment in accordance with oil or
 232 gas rules of the Department of Environmental Protection.

233 (31)~~(30)~~ "Tender" means a permit or certificate of
 234 clearance for the transportation or the delivery of oil, gas, or

235 products, approved and issued or registered under the authority
 236 of the division.

237 (32)~~(31)~~ "Waste," in addition to its ordinary meaning,
 238 means "physical waste" as that term is generally understood in
 239 the oil and gas industry. The term "waste" includes:

240 (a) The inefficient, excessive, or improper use or
 241 dissipation of reservoir energy; and the locating, spacing,
 242 drilling, equipping, operating, or producing of any oil or gas
 243 well or wells in a manner that results, or tends to result, in
 244 reducing the quantity of oil or gas ultimately to be stored or
 245 recovered from any pool in this state.

246 (b) The inefficient storing of oil; and the locating,
 247 spacing, drilling, equipping, operating, or producing of any oil
 248 or gas well or wells in a manner that causes, or tends to cause,
 249 unnecessary or excessive surface loss or destruction of oil or
 250 gas.

251 (c) The producing of oil or gas in a manner that causes
 252 unnecessary water channeling or coning.

253 (d) The operation of any oil well or wells with an
 254 inefficient gas-oil ratio.

255 (e) The drowning with water of any stratum or part thereof
 256 capable of producing oil or gas.

257 (f) The underground waste, however caused and whether or
 258 not defined.

259 (g) The creation of unnecessary fire hazards.

260 (h) The escape into the open air, from a well producing

261 both oil and gas, of gas in excess of the amount that is
 262 necessary in the efficient drilling or operation of the well.

263 (i) The use of gas for the manufacture of carbon black.

264 (j) Permitting gas produced from a gas well to escape into
 265 the air.

266 (k) The abuse of the correlative rights and opportunities
 267 of each owner of oil and gas in a common reservoir due to
 268 nonuniform, disproportionate, and unratable withdrawals, causing
 269 undue drainage between tracts of land.

270 ~~(33)~~~~(32)~~ "Well site" means the general area around a well,
 271 which area has been disturbed from its natural or existing
 272 condition, as well as the drilling or production pad, mud and
 273 water circulation pits, and other operation areas necessary to
 274 drill for or produce oil or gas, or to inject gas into and
 275 recover gas from a natural gas storage facility.

276 Section 3. Subsection (2) of section 377.22, Florida
 277 Statutes, is amended to read:

278 377.22 Rules and orders.—

279 (2) The department shall issue orders and adopt rules
 280 pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the~~
 281 ~~provisions of~~ this chapter. Such rules and orders shall ensure
 282 that all precautions are taken to prevent the spillage of oil or
 283 any other pollutant in all phases of the drilling for, and
 284 extracting of, oil, gas, or other petroleum products, including
 285 high-pressure well stimulations, or during the injection of gas
 286 into and recovery of gas from a natural gas storage reservoir.

287 The department shall revise such rules from time to time as
 288 necessary for the proper administration and enforcement of this
 289 chapter. Rules adopted and orders issued in accordance with this
 290 section are for, but not limited to, the following purposes:

291 (a) To require the drilling, casing, and plugging of wells
 292 to be done in such a manner as to prevent the pollution of the
 293 fresh, salt, or brackish waters or the lands of the state and to
 294 protect the integrity of natural gas storage reservoirs.

295 (b) To prevent the alteration of the sheet flow of water
 296 in any area.

297 (c) To require that appropriate safety equipment be
 298 installed to minimize the possibility of an escape of oil or
 299 other petroleum products in the event of accident, human error,
 300 or a natural disaster during drilling, casing, or plugging of
 301 any well and during extraction operations.

302 (d) To require the drilling, casing, and plugging of wells
 303 to be done in such a manner as to prevent the escape of oil or
 304 other petroleum products from one stratum to another.

305 (e) To prevent the intrusion of water into an oil or gas
 306 stratum from a separate stratum, except as provided by rules of
 307 the division relating to the injection of water for proper
 308 reservoir conservation and brine disposal.

309 (f) To require a reasonable bond, or other form of
 310 security acceptable to the department, conditioned upon properly
 311 drilling, casing, producing, and operating each well, and
 312 properly plugging ~~the performance of the duty to plug properly~~

313 each dry and abandoned well and the full and complete
 314 restoration by the applicant of the area over which geophysical
 315 exploration, drilling, or production is conducted to the similar
 316 contour and general condition in existence before ~~prior to~~ such
 317 operation.

318 (g) To require and carry out a reasonable program of
 319 monitoring and inspecting ~~or inspection of~~ all drilling
 320 operations, high-pressure well stimulations, producing wells, ~~or~~
 321 injecting wells, and well sites, including regular inspections
 322 by division personnel. Inspections will be required during the
 323 testing of blowout preventers, during the pressure testing of
 324 the casing and casing shoe, and during the integrity testing of
 325 the cement plugs in plugging and abandonment operations.

326 (h) To require the making of reports showing the location
 327 of all oil and gas wells; the making and filing of logs; the
 328 taking and filing of directional surveys; the filing of
 329 electrical, sonic, radioactive, and mechanical logs of oil and
 330 gas wells; if taken, the saving of cutting and cores, the cuts
 331 of which shall be given to the Bureau of Geology; and the making
 332 of reports with respect to drilling and production records.
 333 However, such information, or any part thereof, at the request
 334 of the operator, shall be exempt from ~~the provisions of~~ s.
 335 119.07(1) and held confidential by the division for ~~a period of~~
 336 1 year after the completion of a well.

337 (i) To prevent wells from being drilled, operated, or
 338 produced in such a manner as to cause injury to neighboring

339 leases, property, or natural gas storage reservoirs.

340 (j) To prevent the drowning by water of any stratum, or
 341 part thereof, capable of producing oil or gas in paying
 342 quantities and to prevent the premature and irregular
 343 encroachment of water which reduces, or tends to reduce, the
 344 total ultimate recovery of oil or gas from any pool.

345 (k) To require the operation of wells with efficient gas-
 346 oil ratio, and to fix such ratios.

347 (l) To prevent "blowouts," "caving," and "seepage," in the
 348 sense that conditions indicated by such terms are generally
 349 understood in the oil and gas business.

350 (m) To prevent fires.

351 (n) To identify the ownership of all oil or gas wells,
 352 producing leases, refineries, tanks, plants, structures, and
 353 storage and transportation equipment and facilities.

354 (o) To regulate the "shooting," perforating, ~~and~~ chemical
 355 treatment, and high-pressure stimulations of wells.

356 (p) To regulate secondary recovery methods, including the
 357 introduction of gas, air, water, or other substance into
 358 producing formations.

359 (q) To regulate gas cycling operations.

360 (r) To regulate the storage and recovery of gas injected
 361 into natural gas storage facilities.

362 (s) If necessary for the prevention of waste, as herein
 363 defined, to determine, limit, and prorate the production of oil
 364 or gas, or both, from any pool or field in the state.

365 (t) To require, either generally or in or from particular
 366 areas, certificates of clearance or tenders in connection with
 367 the transportation or delivery of oil or gas, or any product.

368 (u) To regulate the spacing of wells and to establish
 369 drilling units.

370 (v) To prevent, so far as is practicable, reasonably
 371 avoidable drainage from each developed unit which is not
 372 equalized by counterdrainage.

373 (w) To require that geophysical operations requiring a
 374 permit be conducted in a manner which will minimize the impact
 375 on hydrology and biota of the area, especially environmentally
 376 sensitive lands and coastal areas.

377 (x) To regulate aboveground crude oil storage tanks in a
 378 manner which will protect the water resources of the state.

379 (y) To act in a receivership capacity for fractional
 380 mineral interests for which the owners are unknown or unlocated
 381 and to administratively designate the operator as the lessee.

382 (z) To evaluate the history of past adjudicated violations
 383 committed by permit applicants or the applicants' affiliated
 384 entities of any substantive and material rule or law pertaining
 385 to the regulation of oil or gas.

386 Section 4. Subsections (6) through (9) of section 377.24,
 387 Florida Statutes, are renumbered as subsections (5) through (8),
 388 respectively, present subsections (1), (2), (4), and (5) are
 389 amended, and a new subsection (9) is added to that section, to
 390 read:

391 377.24 Notice of intention to drill well; permits;
 392 abandoned wells and dry holes.-

393 (1) Before drilling a well in search of oil or gas, before
 394 performing a high-pressure well stimulation, or before storing
 395 gas in or recovering gas from a natural gas storage reservoir,
 396 the person who desires to drill for, store, or recover gas, ~~or~~
 397 drill for oil or gas, or perform a high-pressure well
 398 stimulation shall notify the division upon such form as it may
 399 prescribe and shall pay a reasonable fee set by rule of the
 400 department not to exceed the actual cost of processing and
 401 inspecting for each well or reservoir. The drilling of any well,
 402 the performance of any high-pressure well stimulation, and the
 403 storing and recovering of gas are prohibited until such notice
 404 is given, the fee is paid, and a ~~the~~ permit is granted. A permit
 405 may authorize a single activity or multiple activities.

406 (2) An application for the drilling of a well in search of
 407 oil or gas, for the performance of a high-pressure well
 408 stimulation, or for the storing of gas in and recovering of gas
 409 from a natural gas storage reservoir, in this state must include
 410 the address of the residence of the applicant, or applicants,
 411 which must be the address of each person involved in accordance
 412 with the records of the Division of Water Resource Management
 413 until such address is changed on the records of the division
 414 after written request.

415 (4) Application for permission to drill or abandon any
 416 well or perform a high-pressure well stimulation may be denied

417 | by the division for only just and lawful cause.

418 | ~~(5) No permit to drill a gas or oil well shall be granted~~
 419 | ~~within the corporate limits of any municipality, unless the~~
 420 | ~~governing authority of the municipality shall have first duly~~
 421 | ~~approved the application for such permit by resolution.~~

422 | (9) The department may not approve a permit to authorize a
 423 | high-pressure well stimulation until rules for high-pressure
 424 | well stimulation are adopted.

425 | Section 5. Subsections (5) and (6) are added to section
 426 | 377.241, Florida Statutes, to read:

427 | 377.241 Criteria for issuance of permits.—The division, in
 428 | the exercise of its authority to issue permits as hereinafter
 429 | provided, shall give consideration to and be guided by the
 430 | following criteria:

431 | (5) For high-pressure well stimulations, whether the high-
 432 | pressure well stimulation as proposed is designed to ensure
 433 | that:

434 | (a) The groundwater through which the well will be or has
 435 | been drilled is not contaminated by the high-pressure well
 436 | stimulation; and

437 | (b) The high-pressure well stimulation is consistent with
 438 | the public policy of this state as specified in s. 377.06.

439 | (6) As a basis for permit denial or imposition of specific
 440 | permit conditions, including increased bonding up to five times
 441 | the applicable limits and increased monitoring, the history of
 442 | past adjudicated violations committed by the applicant or an

443 affiliated entity of the applicant of any substantive and
 444 material rule or law pertaining to the regulation of oil or gas,
 445 including violations that occurred outside the state.

446 Section 6. Section 377.242, Florida Statutes, is amended
 447 to read:

448 377.242 Permits for drilling or exploring and extracting
 449 through well holes or by other means.—The department is vested
 450 with the power and authority:

451 (1)(a) To issue permits for the performance of a high-
 452 pressure well stimulation or the drilling for, exploring for, or
 453 production of oil, gas, or other petroleum products ~~that~~ ~~which~~
 454 are to be extracted from below the surface of the land,
 455 including submerged land, only through the well hole drilled for
 456 oil, gas, and other petroleum products.

457 1. A ~~No~~ structure intended for the drilling for, or
 458 production of, oil, gas, or other petroleum products may not be
 459 permitted or constructed on any submerged land within any bay or
 460 estuary.

461 2. A ~~No~~ structure intended for the drilling for, or
 462 production of, oil, gas, or other petroleum products may not be
 463 permitted or constructed within 1 mile seaward of the coastline
 464 of the state.

465 3. A ~~No~~ structure intended for the drilling for, or
 466 production of, oil, gas, or other petroleum products may not be
 467 permitted or constructed within 1 mile of the seaward boundary
 468 of any state, local, or federal park or aquatic or wildlife

469 | preserve or on the surface of a freshwater lake, river, or
 470 | stream.

471 | 4. A ~~Ne~~ structure intended for the drilling for, or
 472 | production of, oil, gas, or other petroleum products may not be
 473 | permitted or constructed within 1 mile inland from the shoreline
 474 | of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary
 475 | or within 1 mile of any freshwater lake, river, or stream unless
 476 | the department is satisfied that the natural resources of such
 477 | bodies of water and shore areas of the state will be adequately
 478 | protected in the event of accident or blowout.

479 | 5. Without exception, after July 1, 1989, a ~~ne~~ structure
 480 | intended for the drilling for, or production of, oil, gas, or
 481 | other petroleum products may not be permitted or constructed
 482 | south of 26°00'00" north latitude off Florida's west coast and
 483 | south of 27°00'00" north latitude off Florida's east coast,
 484 | within the boundaries of Florida's territorial seas as defined
 485 | in 43 U.S.C. s. 1301. After July 31, 1990, a ~~ne~~ structure
 486 | intended for the drilling for, or production of, oil, gas, or
 487 | other petroleum products may not be permitted or constructed
 488 | north of 26°00'00" north latitude off Florida's west coast to
 489 | the western boundary of the state bordering Alabama as set forth
 490 | in s. 1, Art. II of the State Constitution, or located north of
 491 | 27°00'00" north latitude off Florida's east coast to the
 492 | northern boundary of the state bordering Georgia as set forth in
 493 | s. 1, Art. II of the State Constitution, within the boundaries
 494 | of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

495 (b) Subparagraphs (a)1. and 4. do not apply to permitting
 496 or construction of structures intended for the drilling for, or
 497 production of, oil, gas, or other petroleum products pursuant to
 498 an oil, gas, or mineral lease of such lands by the state under
 499 which lease any valid drilling permits are in effect on the
 500 effective date of this act. In the event that such permits
 501 contain conditions or stipulations, such conditions and
 502 stipulations shall govern and supersede subparagraphs (a)1. and
 503 4.

504 (c) The prohibitions of subparagraphs (a)1.-4. ~~in this~~
 505 ~~subsection~~ do not include "infield gathering lines," provided no
 506 other placement is reasonably available and all other required
 507 permits have been obtained.

508 (2) To issue permits to explore for and extract minerals
 509 which are subject to extraction from the land by means other
 510 than through a well hole.

511 (3) To issue permits to establish natural gas storage
 512 facilities or construct wells for the injection and recovery of
 513 any natural gas for storage in natural gas storage reservoirs.

514
 515 Each permit shall contain an agreement by the permit holder that
 516 the permit holder will not prevent inspection by division
 517 personnel at any time, including during installation and
 518 cementing of casing, testing of blowout preventers, pressure
 519 testing of the casing and casing shoe, and integrity testing of
 520 the cement plugs in plugging and abandonment operations. The

521 | provisions of this section prohibiting permits for drilling or
 522 | exploring for oil in coastal waters do not apply to any leases
 523 | entered into before June 7, 1991.

524 | Section 7. Subsection (1) of section 377.2425, Florida
 525 | Statutes, is amended to read:

526 | 377.2425 Manner of providing security for geophysical
 527 | exploration, drilling, and production.—

528 | (1) Before ~~Prior to~~ granting a permit for conducting ~~to~~
 529 | ~~conduct~~ geophysical operations; drilling of exploratory,
 530 | injection, or production wells; producing oil and gas from a
 531 | wellhead; performing a high-pressure well stimulation; or
 532 | transporting oil and gas through a field-gathering system, the
 533 | department shall require the applicant or operator to provide
 534 | surety that these operations will be conducted in a safe and
 535 | environmentally compatible manner.

536 | (a) The applicant for a drilling, production, high-
 537 | pressure well stimulation, or injection well permit or a
 538 | geophysical permit may provide the following types of surety to
 539 | the department for this purpose:

540 | 1. A deposit of cash or other securities made payable to
 541 | the Minerals Trust Fund. Such cash or securities so deposited
 542 | shall be held at interest by the Chief Financial Officer to
 543 | satisfy safety and environmental performance provisions of this
 544 | chapter. The interest shall be credited to the Minerals Trust
 545 | Fund. Such cash or other securities shall be released by the
 546 | Chief Financial Officer upon request of the applicant and

547 certification by the department that all safety and
 548 environmental performance provisions established by the
 549 department for permitted activities have been fulfilled.

550 2. A bond of a surety company authorized to do business in
 551 the state in an amount as provided by rule.

552 3. A surety in the form of an irrevocable letter of credit
 553 in an amount as provided by rule guaranteed by an acceptable
 554 financial institution.

555 (b) An applicant for a drilling, production, high-pressure
 556 well stimulation, or injection well permit, or a permittee who
 557 intends to continue participating in long-term production
 558 activities of such wells, has the option to provide surety to
 559 the department by paying an annual fee to the Minerals Trust
 560 Fund. For an applicant or permittee choosing this option the
 561 following shall apply:

562 1. For the first year, or part of a year, of a drilling,
 563 production, or injection well permit, or change of operator, the
 564 fee is \$4,000 per permitted well.

565 2. For each subsequent year, or part of a year, the fee is
 566 \$1,500 per permitted well.

567 3. The maximum fee that an applicant or permittee may be
 568 required to pay into the trust fund is \$30,000 per calendar
 569 year, regardless of the number of permits applied for or in
 570 effect.

571 4. The fees set forth in subparagraphs 1., 2., and 3.
 572 shall be reviewed by the department on a biennial basis and

573 | adjusted for the cost of inflation. The department shall
 574 | establish by rule a suitable index for implementing such fee
 575 | revisions.

576 | (c) An applicant for a drilling or operating permit for
 577 | operations planned in coastal waters that by their nature
 578 | warrant greater surety shall provide surety only in accordance
 579 | with paragraph (a), or similar proof of financial responsibility
 580 | other than as provided in paragraph (b). For all such
 581 | applications, including applications pending at the effective
 582 | date of this act and notwithstanding ~~the provisions of~~ paragraph
 583 | (b), the Governor and Cabinet in their capacity as the
 584 | Administration Commission, at the recommendation of the
 585 | department ~~of Environmental Protection~~, shall set a reasonable
 586 | amount of surety required under this subsection. The surety
 587 | amount shall be based on the projected cleanup costs and natural
 588 | resources damages resulting from a maximum oil spill and adverse
 589 | hydrographic and atmospheric conditions that would tend to
 590 | transport the oil into environmentally sensitive areas, as
 591 | determined by the department ~~of Environmental Protection~~.

592 | Section 8. Section 377.2436, Florida Statutes, is created
 593 | to read:

594 | 377.2436 Study on high-pressure well stimulation.-

595 | (1) The department shall conduct a study on high-pressure
 596 | well stimulation. The study shall:

597 | (a) Evaluate the underlying geologic features present in
 598 | the counties where oil wells have been permitted and analyze the

599 potential impact that high-pressure well stimulation and
 600 wellbore construction may have on the underlying geologic
 601 features.

602 (b) Evaluate the potential hazards and risks that high-
 603 pressure well stimulation poses to surface water or groundwater
 604 resources. The study shall assess the potential impacts of high-
 605 pressure well stimulation on drinking water resources and
 606 identify the main factors affecting the severity and frequency
 607 of impacts and shall analyze the potential for the use or reuse
 608 of recycled water in well stimulation fluids while meeting
 609 appropriate water quality standards.

610 (c) Review and evaluate the potential for groundwater
 611 contamination from conducting high-pressure well stimulation
 612 under wells that have been previously abandoned and plugged and
 613 identify a setback radius from previously plugged and abandoned
 614 wells that could be impacted by high-pressure well stimulation.

615 (d) Review and evaluate the ultimate disposition of well
 616 stimulation fluids after use in well stimulation processes.

617 (2) The department shall continue conventional oil and gas
 618 business operations during the performance of the study. There
 619 shall not be a moratorium on the evaluation and issuance of
 620 permits for conventional drilling, exploration, conventional
 621 completions, or conventional workovers during the performance of
 622 the study.

623 (3) The study is subject to independent scientific peer
 624 review.

625 (4) The findings of the study shall be submitted to the
 626 Governor, the President of the Senate, and the Speaker of the
 627 House of Representatives by June 30, 2017, and shall be
 628 prominently posted on the department website.

629 Section 9. Paragraph (a) of subsection (1) of section
 630 377.37, Florida Statutes, is amended to read:

631 377.37 Penalties.—

632 (1)(a) A ~~Any~~ person who violates any provision of this
 633 chapter law or any rule, regulation, or order of the division
 634 made under this chapter or who violates the terms of any permit
 635 to drill for or produce oil, gas, or other petroleum products
 636 referred to in s. 377.242(1) or to store gas in a natural gas
 637 storage facility, or any lessee, permitholder, or operator of
 638 equipment or facilities used in the exploration for, drilling
 639 for, or production of oil, gas, or other petroleum products, or
 640 storage of gas in a natural gas storage facility, who refuses
 641 inspection by the division as provided in this chapter, is
 642 liable to the state for any damage caused to the air, waters, or
 643 property, including animal, plant, or aquatic life, of the state
 644 and for reasonable costs and expenses of the state in tracing
 645 the source of the discharge, in controlling and abating the
 646 source and the pollutants, and in restoring the air, waters, and
 647 property, including animal, plant, and aquatic life, of the
 648 state. Furthermore, such person, lessee, permitholder, or
 649 operator is subject to the judicial imposition of a civil
 650 penalty ~~in an amount~~ of not more than \$25,000 ~~\$10,000~~ for each

651 offense. However, the court may receive evidence in mitigation.
 652 Each day during any portion of which such violation occurs
 653 constitutes a separate offense. This paragraph does not ~~Nothing~~
 654 ~~herein shall~~ give the department the right to bring an action on
 655 behalf of a ~~any~~ private person.

656 Section 10. Section 377.45, Florida Statutes, is created
 657 to read:

658 377.45 High-pressure well stimulation chemical disclosure
 659 registry.-

660 (1) (a) The department shall designate the national
 661 chemical disclosure registry, known as FracFocus, developed by
 662 the Ground Water Protection Council and the Interstate Oil and
 663 Gas Compact Commission, as the state's registry for chemical
 664 disclosure for all wells on which high-pressure well
 665 stimulations are performed. The department shall provide a link
 666 to FracFocus through the department's website.

667 (b) In addition to providing such information to the
 668 department as part of the permitting process, a service
 669 provider, vendor, or well owner or operator shall report, by
 670 department rule, to the department, at a minimum, the following
 671 information:

672 1. The name of the service provider, vendor, or owner or
 673 operator.

674 2. The date of completion of the high-pressure well
 675 stimulation.

676 3. The county in which the well is located.

- 677 4. The API number for the well.
- 678 5. The well name and number.
- 679 6. The longitude and latitude of the wellhead.
- 680 7. The total vertical depth of the well.
- 681 8. The total volume of water used in the high-pressure
 682 well stimulation.
- 683 9. Each chemical ingredient that is subject to 29 C.F.R.
 684 s. 1910.1200(g)(2) and the ingredient concentration in the high-
 685 pressure well stimulation fluid by mass for each well on which a
 686 high-pressure well stimulation is performed.
- 687 10. The trade or common name and the CAS registry number
 688 for each chemical ingredient.
- 689 (c) The department shall report to FracFocus all
 690 information received pursuant to paragraph (b), excluding any
 691 information subject to chapter 688.
- 692 (d) If the chemical disclosure registry cannot accept and
 693 make publicly available any information specified in this
 694 section, the department shall post the information on the
 695 department's website, excluding any information subject to
 696 chapter 688.
- 697 (2) A service provider, vendor, or well owner or operator
 698 shall:
- 699 (a) Report the information required under subsection (1)
 700 to the department within 60 days after the initiation of the
 701 high-pressure well stimulation for each well on which such high-
 702 pressure well stimulation is performed.

703 (b) Notify the department if any chemical ingredient not
 704 previously reported is intentionally included and used for the
 705 purpose of performing a high-pressure well stimulation.

706 (3) This section does not apply to an ingredient that:

707 (a) Is not intentionally added to the high-pressure well
 708 stimulation; or

709 (b) Occurs incidentally or is otherwise unintentionally
 710 present in a high-pressure well stimulation.

711 (4) The department shall adopt rules to administer this
 712 section.

713 Section 11. Section 377.07, Florida Statutes, is amended
 714 to read:

715 377.07 Division of Water Resource Management; powers,
 716 duties, and authority.—The Division of Water Resource Management
 717 of the Department of Environmental Protection is ~~hereby~~ vested
 718 with power, authority, and duty to administer, carry out, and
 719 enforce ~~the provisions of this part law as directed in s.~~
 720 ~~370.02(3).~~

721 Section 12. Section 377.10, Florida Statutes, is amended
 722 to read:

723 377.10 Certain persons not to be employed by division.—A
 724 ~~No~~ person in the employ of, or holding any official connection
 725 or position with any person, firm, partnership, corporation, or
 726 association of any kind, engaged in the business of buying or
 727 selling mineral leases, drilling wells in the search of oil or
 728 gas, producing, transporting, refining, or distributing oil or

729 gas may not ~~shall~~ hold any position under, or be employed by,
 730 the Division of Water Resource Management in the prosecution of
 731 its duties under this part ~~law~~.

732 Section 13. Subsection (1) of section 377.243, Florida
 733 Statutes, is amended to read:

734 377.243 Conditions for granting permits for extraction
 735 through well holes.—

736 (1) Before ~~Prior to~~ the application to the Division of
 737 Water Resource Management for the permit to drill for oil, gas,
 738 and related products referred to in s. 377.242(1), the applicant
 739 must own a valid deed, or other muniment of title, or lease
 740 granting the ~~said~~ applicant the privilege to explore for oil,
 741 gas, or related mineral products to be extracted only through
 742 the well hole on the land or lands included in the application.
 743 However, unallocated interests may be unitized according to s.
 744 377.27.

745 Section 14. Subsection (1) of section 377.244, Florida
 746 Statutes, is amended to read:

747 377.244 Conditions for granting permits for surface
 748 exploratory and extraction operations.—

749 (1) Exploration for and extraction of minerals under ~~and~~
 750 ~~by virtue of~~ the authority of a grant of oil, gas, or mineral
 751 rights, or which, subsequent to such grant, may ~~be interpreted~~
 752 ~~to~~ include the right to explore for and extract minerals which
 753 are subject to extraction from the land by means other than
 754 through a well hole, that is by means of surface exploratory and

755 extraction operations such as sifting of the sands, dragline,
 756 open pit mining, or other type of surface operation, which would
 757 include movement of sands, dirt, rock, or minerals, shall be
 758 exercised only pursuant to a permit issued by the Division of
 759 Water Resource Management upon the applicant's compliance
 760 ~~applicant complying~~ with the following conditions:

761 (a) The applicant must own a valid deed, or other muniment
 762 of title, or lease granting the applicant the right to explore
 763 for and extract oil, gas, and other minerals from the said
 764 lands.

765 (b) The applicant shall post a good and sufficient surety
 766 bond with the division in such amount as the division determines
 767 ~~may determine~~ is adequate to afford full and complete protection
 768 for the owner of the surface rights of the lands described in
 769 the application, conditioned upon the full and complete
 770 restoration, by the applicant, of the area over which the
 771 exploratory and extraction operations are conducted to the same
 772 condition and contour in existence before ~~prior to~~ such
 773 operations.

774 Section 15. For the 2016-2017 fiscal year, the sum of \$1
 775 million in nonrecurring funds is appropriated from the General
 776 Revenue Fund to the Department of Environmental Protection to
 777 perform a high-pressure well stimulation study pursuant to s.
 778 377.2436, Florida Statutes.

779 Section 16. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 377.06, Florida Statutes, is amended to
 7 read:

8 377.06 Public policy of state concerning natural resources
 9 of oil and gas; preemption.-

10 (1) It is ~~hereby declared~~ the public policy of this state
 11 to conserve and control the natural resources of oil and gas in
 12 this state, and the products made from oil and gas in this
 13 state; to prevent waste of natural resources; to provide for the
 14 protection and adjustment of the correlative rights of the
 15 owners of the land in which the natural resources lie, of the
 16 owners and producers of oil and gas resources and the products
 17 made from oil and gas, and of others interested in these



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18 resources and products; and to safeguard the health, property,
19 and public welfare of the residents of this state and other
20 interested persons ~~and for all purposes indicated by the~~
21 ~~provisions in this section.~~

22 (2) Further, It is the public policy of this state
23 ~~declared~~ that underground storage of natural gas is in the
24 public interest because underground storage promotes
25 conservation of natural gas, + makes gas more readily available
26 to the domestic, commercial, and industrial consumers of this
27 state, + and allows the accumulation of large quantities of gas
28 in reserve for orderly withdrawal during emergencies or periods
29 of peak demand. It is not the intention of this section to
30 limit, restrict, or modify in any way the provisions of this
31 law.

32 (3) The Legislature declares that all matters relating to
33 the regulation of the exploration, development, production,
34 processing, storage, and transportation of oil and gas are
35 preempted to the state, to the exclusion of all existing and
36 future ordinances or regulations relating thereto adopted by any
37 county, municipality, or other political subdivision of the
38 state. Any such existing ordinance or regulation is void. A
39 county or municipality may, however, enforce an existing zoning
40 ordinance adopted before January 1, 2015, if the ordinance is
41 otherwise valid.

42 Section 2. Section 377.19, Florida Statutes, is amended to
43 read:

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Amendment No.

44 377.19 Definitions.—As used in ss. 377.06, 377.07, and
45 377.10-377.45 ~~377.10-377.40~~, the term:

46 (1) "Completion date" means the day, month, and year that
47 a new productive well, a previously shut-in well, or a
48 temporarily abandoned well is completed, repaired, or
49 recompleted and the operator begins producing oil or gas in
50 commercial quantities.

51 (2) "Department" means the Department of Environmental
52 Protection.

53 (3) "Division" means the Division of Water Resource
54 Management of the Department of Environmental Protection.

55 (4) "Field" means the general area that is underlaid, or
56 appears to be underlaid, by at least one pool. The term includes
57 the underground reservoir, or reservoirs, containing oil or gas,
58 or both. The terms "field" and "pool" mean the same thing if
59 only one underground reservoir is involved; however, the term
60 "field," unlike the term "pool," may relate to two or more
61 pools.

62 (5) "Gas" means all natural gas, including casinghead gas,
63 and all other hydrocarbons not defined as oil in subsection (16)
64 ~~(15)~~.

65 (6) "High-pressure well stimulation" means all stages of a
66 well intervention performed by injecting fluids into a rock
67 formation at high pressure that exceeds the fracture gradient of
68 the rock formation in order to propagate fractures in such
69 formation to increase production at an oil or gas well by



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70 improving the flow of hydrocarbons from the formation into the
71 wellbore. The term does not include well stimulation or
72 conventional workover procedures that may incidentally fracture
73 the formation near the wellbore.

74 (7)(6) "Horizontal well" means a well completed with the
75 wellbore in a horizontal or nearly horizontal orientation within
76 10 degrees of horizontal within the producing formation.

77 (8)(7) "Illegal gas" means gas that has been produced
78 within the state from any well or wells in excess of the amount
79 allowed by any rule, regulation, or order of the division, as
80 distinguished from gas produced within the State of Florida from
81 a well not producing in excess of the amount so allowed, which
82 is "legal gas."

83 (9)(8) "Illegal oil" means oil that has been produced
84 within the state from any well or wells in excess of the amount
85 allowed by rule, regulation, or order of the division, as
86 distinguished from oil produced within the state from a well not
87 producing in excess of the amount so allowed, which is "legal
88 oil."

89 (10)(9) "Illegal product" means a product of oil or gas,
90 any part of which was processed or derived, in whole or in part,
91 from illegal gas or illegal oil or from any product thereof, as
92 distinguished from "legal product," which is a product processed
93 or derived to no extent from illegal oil or illegal gas.

94 (11)(10) "Lateral storage reservoir boundary" means the
95 projection up to the land surface of the maximum horizontal



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96 extent of the gas volume contained in a natural gas storage
97 reservoir.

98 (12)~~(11)~~ "Native gas" means gas that occurs naturally
99 within this state and does not include gas produced outside the
100 state, transported to this state, and injected into a permitted
101 natural gas storage facility.

102 (13)~~(12)~~ "Natural gas storage facility" means an
103 underground reservoir from which oil or gas has previously been
104 produced and which is used or to be used for the underground
105 storage of natural gas, and any surface or subsurface structure,
106 or infrastructure, except wells. The term also includes a right
107 or appurtenance necessary or useful in the operation of the
108 facility for the underground storage of natural gas, including
109 any necessary or reasonable reservoir protective area as
110 designated for the purpose of ensuring the safe operation of the
111 storage of natural gas or protecting the natural gas storage
112 facility from pollution, invasion, escape, or migration of gas,
113 or any subsequent extension thereof. The term does not mean a
114 transmission, distribution, or gathering pipeline or system that
115 is not used primarily as integral piping for a natural gas
116 storage facility.

117 (14)~~(13)~~ "Natural gas storage reservoir" means a pool or
118 field from which gas or oil has previously been produced and
119 which is suitable for or capable of being made suitable for the
120 injection, storage, and recovery of gas, as identified in a
121 permit application submitted to the department under s.



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122 377.2407.

123 ~~(15)-(14)~~ "New field well" means an oil or gas well
124 completed after July 1, 1997, in a new field as designated by
125 the Department of Environmental Protection.

126 ~~(16)-(15)~~ "Oil" means crude petroleum oil and other
127 hydrocarbons, regardless of gravity, which are produced at the
128 well in liquid form by ordinary production methods, and which
129 are not the result of condensation of gas after it leaves the
130 reservoir.

131 ~~(17)-(16)~~ "Oil and gas" has the same meaning as the term
132 "oil or gas."

133 ~~(18)-(17)~~ "Oil and gas administrator" means the State
134 Geologist.

135 ~~(19)-(18)~~ "Operator" means the entity who:

136 (a) Has the right to drill and to produce a well; or

137 (b) As part of a natural gas storage facility, injects, or
138 is engaged in the work of preparing to inject, gas into a
139 natural gas storage reservoir; or stores gas in, or removes gas
140 from, a natural gas storage reservoir.

141 ~~(20)-(19)~~ "Owner" means the person who has the right to
142 drill into and to produce from any pool and to appropriate the
143 production for the person or for the person and another, or
144 others.

145 ~~(21)-(20)~~ "Person" means a natural person, corporation,
146 association, partnership, receiver, trustee, guardian, executor,
147 administrator, fiduciary, or representative of any kind.

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148 ~~(22)~~~~(21)~~ "Pool" means an underground reservoir containing
149 or appearing to contain a common accumulation of oil or gas or
150 both. Each zone of a general structure which is completely
151 separated from any other zone on the structure is considered a
152 separate pool as used herein.

153 ~~(23)~~~~(22)~~ "Producer" means the owner or operator of a well
154 or wells capable of producing oil or gas, or both.

155 ~~(24)~~~~(23)~~ "Product" means a commodity made from oil or gas
156 and includes refined crude oil, crude tops, topped crude,
157 processed crude petroleum, residue from crude petroleum,
158 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
159 residuum, gas oil, casinghead gasoline, natural gas gasoline,
160 naphtha, distillate, condensate, gasoline, waste oil, kerosene,
161 benzine, wash oil, blended gasoline, lubricating oil, blends or
162 mixtures of oil with one or more liquid products or byproducts
163 derived from oil or gas, and blends or mixtures of two or more
164 liquid products or byproducts derived from oil or gas, whether
165 hereinabove enumerated or not.

166 ~~(25)~~~~(24)~~ "Reasonable market demand" means the amount of
167 oil reasonably needed for current consumption, together with a
168 reasonable amount of oil for storage and working stocks.

169 ~~(26)~~~~(25)~~ "Reservoir protective area" means the area
170 extending up to and including 2,000 feet surrounding a natural
171 gas storage reservoir.

172 ~~(27)~~~~(26)~~ "Shut-in bottom hole pressure" means the pressure
173 at the bottom of a well when all valves are closed and no oil or



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174 gas has been allowed to escape for at least 24 hours.

175 ~~(28)~~~~(27)~~ "Shut-in well" means an oil or gas well that has
176 been taken out of service for economic reasons or mechanical
177 repairs.

178 ~~(29)~~~~(28)~~ "State" means the State of Florida.

179 ~~(30)~~~~(29)~~ "Temporarily abandoned well" means a permitted
180 well or wellbore that has been abandoned by plugging in a manner
181 that allows reentry and redevelopment in accordance with oil or
182 gas rules of the Department of Environmental Protection.

183 ~~(31)~~~~(30)~~ "Tender" means a permit or certificate of
184 clearance for the transportation or the delivery of oil, gas, or
185 products, approved and issued or registered under the authority
186 of the division.

187 ~~(32)~~~~(31)~~ "Waste," in addition to its ordinary meaning,
188 means "physical waste" as that term is generally understood in
189 the oil and gas industry. The term "waste" includes:

190 (a) The inefficient, excessive, or improper use or
191 dissipation of reservoir energy; and the locating, spacing,
192 drilling, equipping, operating, or producing of any oil or gas
193 well or wells in a manner that results, or tends to result, in
194 reducing the quantity of oil or gas ultimately to be stored or
195 recovered from any pool in this state.

196 (b) The inefficient storing of oil; and the locating,
197 spacing, drilling, equipping, operating, or producing of any oil
198 or gas well or wells in a manner that causes, or tends to cause,
199 unnecessary or excessive surface loss or destruction of oil or



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200 gas.

201 (c) The producing of oil or gas in a manner that causes
202 unnecessary water channeling or coning.

203 (d) The operation of any oil well or wells with an
204 inefficient gas-oil ratio.

205 (e) The drowning with water of any stratum or part thereof
206 capable of producing oil or gas.

207 (f) The underground waste, however caused and whether or
208 not defined.

209 (g) The creation of unnecessary fire hazards.

210 (h) The escape into the open air, from a well producing
211 both oil and gas, of gas in excess of the amount that is
212 necessary in the efficient drilling or operation of the well.

213 (i) The use of gas for the manufacture of carbon black.

214 (j) Permitting gas produced from a gas well to escape into
215 the air.

216 (k) The abuse of the correlative rights and opportunities
217 of each owner of oil and gas in a common reservoir due to
218 nonuniform, disproportionate, and unratable withdrawals, causing
219 undue drainage between tracts of land.

220 ~~(33)~~ ~~(32)~~ "Well site" means the general area around a well,
221 which area has been disturbed from its natural or existing
222 condition, as well as the drilling or production pad, mud and
223 water circulation pits, and other operation areas necessary to
224 drill for or produce oil or gas, or to inject gas into and
225 recover gas from a natural gas storage facility.

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226 Section 3. Subsection (2) of section 377.22, Florida
227 Statutes, is amended to read:

228 377.22 Rules and orders.—

229 (2) The department shall issue orders and adopt rules
230 pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the~~
231 ~~provisions of~~ this chapter. Such rules and orders shall ensure
232 that all precautions are taken to prevent the spillage of oil or
233 any other pollutant in all phases of the drilling for, and
234 extracting of, oil, gas, or other petroleum products, including
235 high-pressure well stimulations, or during the injection of gas
236 into and recovery of gas from a natural gas storage reservoir.
237 The department shall revise such rules from time to time as
238 necessary for the proper administration and enforcement of this
239 chapter. Rules adopted and orders issued in accordance with this
240 section are for, but not limited to, the following purposes:

241 (a) To require the drilling, casing, and plugging of wells
242 to be done in such a manner as to prevent the pollution of the
243 fresh, salt, or brackish waters or the lands of the state and to
244 protect the integrity of natural gas storage reservoirs.

245 (b) To prevent the alteration of the sheet flow of water
246 in any area.

247 (c) To require that appropriate safety equipment be
248 installed to minimize the possibility of an escape of oil or
249 other petroleum products in the event of accident, human error,
250 or a natural disaster during drilling, casing, or plugging of
251 any well and during extraction operations.

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252 (d) To require the drilling, casing, and plugging of wells
253 to be done in such a manner as to prevent the escape of oil or
254 other petroleum products from one stratum to another.

255 (e) To prevent the intrusion of water into an oil or gas
256 stratum from a separate stratum, except as provided by rules of
257 the division relating to the injection of water for proper
258 reservoir conservation and brine disposal.

259 (f) To require a reasonable bond, or other form of
260 security acceptable to the department, conditioned upon properly
261 drilling, casing, producing, and operating each well and
262 properly plugging ~~the performance of the duty to plug properly~~
263 each dry and abandoned well and upon the full and complete
264 restoration by the applicant of the area over which geophysical
265 exploration, drilling, or production is conducted to the similar
266 contour and general condition in existence before ~~prior to~~ such
267 operation.

268 (g) To require and carry out a reasonable program of
269 monitoring and inspecting ~~or inspection of~~ all drilling
270 operations, high-pressure well stimulations, producing wells, ~~or~~
271 injecting wells, and well sites, including regular inspections
272 by division personnel. Inspections are required during the
273 testing of blowout preventers, during the pressure testing of
274 the casing and casing shoe, and during the integrity testing of
275 the cement plugs in plugging and abandonment operations.

276 (h) To require the making of reports showing the location
277 of all oil and gas wells; the making and filing of logs; the

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278 taking and filing of directional surveys; the filing of
279 electrical, sonic, radioactive, and mechanical logs of oil and
280 gas wells; if taken, the saving of cutting and cores, the cuts
281 of which shall be given to the Bureau of Geology; and the making
282 of reports with respect to drilling and production records.
283 However, such information, or any part thereof, at the request
284 of the operator, shall be exempt from ~~the provisions of s.~~
285 119.07(1) and held confidential by the division for ~~a period of~~
286 1 year after the completion of a well.

287 (i) To prevent wells from being drilled, operated, or
288 produced in such a manner as to cause injury to neighboring
289 leases, property, or natural gas storage reservoirs.

290 (j) To prevent the drowning by water of any stratum, or
291 part thereof, capable of producing oil or gas in paying
292 quantities and to prevent the premature and irregular
293 encroachment of water which reduces, or tends to reduce, the
294 total ultimate recovery of oil or gas from any pool.

295 (k) To require the operation of wells with efficient gas-
296 oil ratio, and to fix such ratios.

297 (l) To prevent "blowouts," "caving," and "seepage," in the
298 sense that conditions indicated by such terms are generally
299 understood in the oil and gas business.

300 (m) To prevent fires.

301 (n) To identify the ownership of all oil or gas wells,
302 producing leases, refineries, tanks, plants, structures, and
303 storage and transportation equipment and facilities.



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304 (o) To regulate the "shooting," perforating, ~~and~~ chemical
305 treatment, and high-pressure stimulations of wells.

306 (p) To regulate secondary recovery methods, including the
307 introduction of gas, air, water, or other substance into
308 producing formations.

309 (q) To regulate gas cycling operations.

310 (r) To regulate the storage and recovery of gas injected
311 into natural gas storage facilities.

312 (s) If necessary for the prevention of waste, as herein
313 defined, to determine, limit, and prorate the production of oil
314 or gas, or both, from any pool or field in the state.

315 (t) To require, either generally or in or from particular
316 areas, certificates of clearance or tenders in connection with
317 the transportation or delivery of oil or gas, or any product.

318 (u) To regulate the spacing of wells and to establish
319 drilling units.

320 (v) To prevent, so far as is practicable, reasonably
321 avoidable drainage from each developed unit which is not
322 equalized by counterdrainage.

323 (w) To require that geophysical operations requiring a
324 permit be conducted in a manner which will minimize the impact
325 on hydrology and biota of the area, especially environmentally
326 sensitive lands and coastal areas.

327 (x) To regulate aboveground crude oil storage tanks in a
328 manner which will protect the water resources of the state.

329 (y) To act in a receivership capacity for fractional



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330 mineral interests for which the owners are unknown or unlocated
331 and to administratively designate the operator as the lessee.

332 (z) To evaluate the history of prior adjudicated,
333 uncontested, or settled violations committed by permit
334 applicants or the applicants' affiliated entities of any
335 substantive and material rule or law pertaining to the
336 regulation of oil or gas.

337 Section 4. Subsections (1), (2), (4), and (5) of section
338 377.24, Florida Statutes, are amended, and a new subsection (10)
339 and subsection (11) are added to that section, to read:

340 377.24 Notice of intention to drill well; permits;
341 abandoned wells and dry holes.-

342 (1) Before drilling a well in search of oil or gas, before
343 performing a high-pressure well stimulation, or before storing
344 gas in or recovering gas from a natural gas storage reservoir,
345 the person who desires to drill for, store, or recover gas, ~~or~~
346 drill for oil or gas, or perform a high-pressure well
347 stimulation shall notify the division upon such form as it may
348 prescribe and shall pay a reasonable fee set by rule of the
349 department not to exceed the actual cost of processing and
350 inspecting for each well or reservoir. The drilling of any well,
351 the performance of any high-pressure well stimulation, and the
352 storing and recovering of gas are prohibited until such notice
353 is given, the fee is paid, and a ~~the~~ permit is granted. A permit
354 may authorize a single activity or multiple activities.

355 (2) An application for the drilling of a well in search of



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356 oil or gas, for the performance of a high-pressure well
357 stimulation, or for the storing of gas in and recovering of gas
358 from a natural gas storage reservoir, in this state must include
359 the address of the residence of the applicant, or applicants,
360 which must be the address of each person involved in accordance
361 with the records of the Division of Water Resource Management
362 until such address is changed on the records of the division
363 after written request.

364 (4) Application for permission to drill or abandon any
365 well or perform a high-pressure well stimulation may be denied
366 by the division for only just and lawful cause.

367 (5) No permit to drill a gas or oil well shall be granted
368 within the jurisdictional boundaries of any municipality or
369 county, unless the applicant provides notice of the permit
370 application, by certified mail, to the governing authority of
371 the county or municipality. The applicant shall include a copy
372 of the notice with the permit application. No permit to drill a
373 gas or oil well shall be granted within the corporate limits of
374 any municipality, unless the governing authority of the
375 municipality shall have first duly approved the application for
376 such permit by resolution.

377 (10) The department may not approve a permit to authorize
378 a high-pressure well stimulation until the department adopts
379 rules for high-pressure well stimulations which are based upon
380 the findings of the study required pursuant to s. 377.2436 and
381 such rules take effect.



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382 (11) The rules for high-pressure well stimulation shall be
383 submitted to the President of the Senate and Speaker of the
384 House of Representatives and such rules may not take effect
385 until they are ratified by the Legislature.

386 Section 5. Subsections (5), (6), and (7) are added to
387 section 377.241, Florida Statutes, to read:

388 377.241 Criteria for issuance of permits.—The division, in
389 the exercise of its authority to issue permits as hereinafter
390 provided, shall give consideration to and be guided by the
391 following criteria:

392 (5) For high-pressure well stimulations, whether the high-
393 pressure well stimulation as proposed is designed to ensure
394 that:

395 (a) The groundwater near the well location, including
396 groundwater through which the well will be or has been drilled,
397 is not contaminated as a result of the high-pressure well
398 stimulation; and

399 (b) The high-pressure well stimulation is consistent with
400 the public policy of this state as specified in s. 377.06.

401 (6) As a basis for permit denial or imposition of specific
402 permit conditions, including increased bonding up to five times
403 the applicable limits and increased monitoring, the history of
404 prior adjudicated, uncontested, or settled violations committed
405 by the applicant or an affiliated entity of the applicant of any
406 substantive and material rule or law pertaining to the
407 regulation of oil or gas, including violations that occurred

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408 outside the state.

409 (7) Matters raised in comments timely submitted by a
410 municipality to the division pursuant to s. 377.24(5).

411 Section 6. Section 377.242, Florida Statutes, is amended
412 to read:

413 377.242 Permits for drilling or exploring and extracting
414 through well holes or by other means.—The department is vested
415 with the power and authority:

416 (1)(a) To issue permits for the performance of a high-
417 pressure well stimulation or the drilling for, exploring for, or
418 production of oil, gas, or other petroleum products that ~~which~~
419 are to be extracted from below the surface of the land,
420 including submerged land, only through the well hole drilled for
421 oil, gas, and other petroleum products.

422 1. A ~~No~~ structure intended for the drilling for, or
423 production of, oil, gas, or other petroleum products may not be
424 permitted or constructed on any submerged land within any bay or
425 estuary.

426 2. A ~~No~~ structure intended for the drilling for, or
427 production of, oil, gas, or other petroleum products may not be
428 permitted or constructed within 1 mile seaward of the coastline
429 of the state.

430 3. A ~~No~~ structure intended for the drilling for, or
431 production of, oil, gas, or other petroleum products may not be
432 permitted or constructed within 1 mile of the seaward boundary
433 of any state, local, or federal park or aquatic or wildlife

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434 preserve or on the surface of a freshwater lake, river, or
435 stream.

436 4. A ~~Ne~~ structure intended for the drilling for, or
437 production of, oil, gas, or other petroleum products may not be
438 permitted or constructed within 1 mile inland from the shoreline
439 of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary
440 or within 1 mile of any freshwater lake, river, or stream unless
441 the department is satisfied that the natural resources of such
442 bodies of water and shore areas of the state will be adequately
443 protected in the event of accident or blowout.

444 5. Without exception, after July 1, 1989, a ~~ne~~ structure
445 intended for the drilling for, or production of, oil, gas, or
446 other petroleum products may not be permitted or constructed
447 south of 26°00'00" north latitude off Florida's west coast and
448 south of 27°00'00" north latitude off Florida's east coast,
449 within the boundaries of Florida's territorial seas as defined
450 in 43 U.S.C. s. 1301. After July 31, 1990, a ~~ne~~ structure
451 intended for the drilling for, or production of, oil, gas, or
452 other petroleum products may not be permitted or constructed
453 north of 26°00'00" north latitude off Florida's west coast to
454 the western boundary of the state bordering Alabama as set forth
455 in s. 1, Art. II of the State Constitution, or located north of
456 27°00'00" north latitude off Florida's east coast to the
457 northern boundary of the state bordering Georgia as set forth in
458 s. 1, Art. II of the State Constitution, within the boundaries
459 of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

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460 (b) Subparagraphs (a)1. and 4. do not apply to permitting
461 or construction of structures intended for the drilling for, or
462 production of, oil, gas, or other petroleum products pursuant to
463 an oil, gas, or mineral lease of such lands by the state under
464 which lease any valid drilling permits are in effect on the
465 effective date of this act. In the event that such permits
466 contain conditions or stipulations, such conditions and
467 stipulations shall govern and supersede subparagraphs (a)1. and
468 4.

469 (c) The prohibitions of subparagraphs (a)1.-4. ~~in this~~
470 ~~subsection~~ do not include "infield gathering lines," provided no
471 other placement is reasonably available and all other required
472 permits have been obtained.

473 (2) To issue permits to explore for and extract minerals
474 which are subject to extraction from the land by means other
475 than through a well hole.

476 (3) To issue permits to establish natural gas storage
477 facilities or construct wells for the injection and recovery of
478 any natural gas for storage in natural gas storage reservoirs.

479
480 Each permit shall contain an agreement by the permitholder that
481 the permitholder will not prevent inspection by division
482 personnel at any time, including during installation and
483 cementing of casing, during the testing of blowout preventers,
484 during the pressure testing of the casing and casing shoe, and
485 during the integrity testing of the cement plugs in plugging and



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486 abandonment operations. The provisions of this section
487 prohibiting permits for drilling or exploring for oil in coastal
488 waters do not apply to any leases entered into before June 7,
489 1991.

490 Section 7. Subsection (1) of section 377.2425, Florida
491 Statutes, is amended to read:

492 377.2425 Manner of providing security for geophysical
493 exploration, drilling, and production.-

494 (1) Before ~~Prior to~~ granting a permit for conducting ~~to~~
495 ~~conduct~~ geophysical operations; drilling of exploratory,
496 injection, or production wells; producing oil and gas from a
497 wellhead; performing a high-pressure well stimulation; or
498 transporting oil and gas through a field-gathering system, the
499 department shall require the applicant or operator to provide
500 surety that these operations will be conducted in a safe and
501 environmentally compatible manner.

502 (a) The applicant for a drilling, production, high-
503 pressure well stimulation, or injection well permit or a
504 geophysical permit may provide the following types of surety to
505 the department for this purpose:

506 1. A deposit of cash or other securities made payable to
507 the Minerals Trust Fund. Such cash or securities so deposited
508 shall be held at interest by the Chief Financial Officer to
509 satisfy safety and environmental performance provisions of this
510 chapter. The interest shall be credited to the Minerals Trust
511 Fund. Such cash or other securities shall be released by the



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512 Chief Financial Officer upon request of the applicant and
513 certification by the department that all safety and
514 environmental performance provisions established by the
515 department for permitted activities have been fulfilled.

516 2. A bond of a surety company authorized to do business in
517 the state in an amount as provided by rule.

518 3. A surety in the form of an irrevocable letter of credit
519 in an amount as provided by rule guaranteed by an acceptable
520 financial institution.

521 (b) An applicant for a drilling, production, high-pressure
522 well stimulation, or injection well permit, or a permittee who
523 intends to continue participating in long-term production
524 activities of such wells, has the option to provide surety to
525 the department by paying an annual fee to the Minerals Trust
526 Fund. For an applicant or permittee choosing this option the
527 following shall apply:

528 1. For the first year, or part of a year, of a drilling,
529 production, or injection well permit, or change of operator, the
530 fee is \$4,000 per permitted well.

531 2. For each subsequent year, or part of a year, the fee is
532 \$1,500 per permitted well.

533 3. The maximum fee that an applicant or permittee may be
534 required to pay into the trust fund is \$30,000 per calendar
535 year, regardless of the number of permits applied for or in
536 effect.

537 4. The fees set forth in subparagraphs 1., 2., and 3.

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538 shall be reviewed by the department on a biennial basis and
539 adjusted for the cost of inflation. The department shall
540 establish by rule a suitable index for implementing such fee
541 revisions.

542 (c) An applicant for a drilling or operating permit for
543 operations planned in coastal waters that by their nature
544 warrant greater surety shall provide surety only in accordance
545 with paragraph (a), or similar proof of financial responsibility
546 other than as provided in paragraph (b). For all such
547 applications, including applications pending at the effective
548 date of this act and notwithstanding ~~the provisions of~~ paragraph
549 (b), the Governor and Cabinet in their capacity as the
550 Administration Commission, at the recommendation of the
551 department ~~of Environmental Protection~~, shall set a reasonable
552 amount of surety required under this subsection. The surety
553 amount shall be based on the projected cleanup costs and natural
554 resources damages resulting from a maximum oil spill and adverse
555 hydrographic and atmospheric conditions that would tend to
556 transport the oil into environmentally sensitive areas, as
557 determined by the department ~~of Environmental Protection~~.

558 Section 8. Section 377.2436, Florida Statutes, is created
559 to read:

560 377.2436 Study on high-pressure well stimulations.-

561 (1) The department shall conduct a study on high-pressure
562 well stimulations. The study must:

563 (a) Evaluate the underlying geologic features present in



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564 the counties where oil wells have been permitted and analyze the
565 potential impact that high-pressure well stimulation and
566 wellbore construction may have on the underlying geologic
567 features.

568 (b) Evaluate the potential hazards and risks that high-
569 pressure well stimulation poses to surface water or groundwater
570 resources. The study must assess the potential impacts of high-
571 pressure well stimulation on drinking water resources and
572 identify the main factors affecting the severity and frequency
573 of impacts and must analyze the potential for the use or reuse
574 of recycled water in well stimulation fluids while meeting
575 appropriate water quality standards.

576 (c) Review and evaluate the potential for groundwater
577 contamination from conducting high-pressure well stimulation
578 under or near wells that have been previously plugged and
579 abandoned and identify a setback radius from previously plugged
580 and abandoned wells that could be impacted by high-pressure well
581 stimulation.

582 (d) Review and evaluate the ultimate disposition of high-
583 pressure well stimulation fluids after use in high-pressure well
584 stimulation processes.

585 (e) Review and evaluate the potential direct and indirect
586 economic benefits from the use of high pressure well
587 stimulation, including the effect on state and local tax
588 revenues, royalty payments, employment opportunities, and demand
589 for goods and services.



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590 (f) Review and evaluate potential seismic activity
591 associated with high pressure well stimulation and deep-well
592 disposal of oil and gas production wastewater.

593 (g) Review and evaluate the feasibility and impact of
594 waterless fracking to perform high pressure well stimulation.

595 (2) The department shall continue conventional oil and gas
596 business operations during the performance of the study. There
597 may not be a moratorium on the evaluation and issuance of
598 permits for conventional drilling, exploration, conventional
599 completions, or conventional workovers during the performance of
600 the study.

601 (3) The study is subject to independent scientific peer
602 review.

603 (4) The department shall submit the findings of the study
604 to the Governor, the President of the Senate, and the Speaker of
605 the House of Representatives by June 30, 2017, and shall
606 prominently post the findings on its website.

607 (5) The department may not adopt rules for high-pressure
608 well stimulation until the findings of the study have been
609 submitted to the Legislature. However, by March 1, 2018, the
610 department must adopt rules to implement the findings of the
611 study, if such rules are warranted to protect public health,
612 safety, and the environment.

613 Section 9. Paragraph (a) of subsection (1) of section
614 377.37, Florida Statutes, is amended to read:

615 377.37 Penalties.-



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616 (1)(a) A ~~Any~~ person who violates any provision of this
617 chapter law or any rule, regulation, or order of the division
618 made under this chapter or who violates the terms of any permit
619 to drill for or produce oil, gas, or other petroleum products
620 referred to in s. 377.242(1) or to store gas in a natural gas
621 storage facility, or any lessee, permitholder, or operator of
622 equipment or facilities used in the exploration for, drilling
623 for, or production of oil, gas, or other petroleum products, or
624 storage of gas in a natural gas storage facility, who refuses
625 inspection by the division as provided in this chapter, is
626 liable to the state for any damage caused to the air, waters, or
627 property, including animal, plant, or aquatic life, of the state
628 and for reasonable costs and expenses of the state in tracing
629 the source of the discharge, in controlling and abating the
630 source and the pollutants, and in restoring the air, waters, and
631 property, including animal, plant, and aquatic life, of the
632 state. Furthermore, such person, lessee, permitholder, or
633 operator is subject to the judicial imposition of a civil
634 penalty ~~in an amount~~ of not more than \$25,000 ~~\$10,000~~ for each
635 offense. However, the court may receive evidence in mitigation.
636 Each day during any portion of which such violation occurs
637 constitutes a separate offense. This paragraph does not ~~Nothing~~
638 ~~herein shall~~ give the department the right to bring an action on
639 behalf of a ~~any~~ private person.

640 Section 10. Section 377.45, Florida Statutes, is created
641 to read:

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Amendment No.

642 377.45 High-pressure well stimulation chemical disclosure
643 registry.-

644 (1)(a) The department shall designate the national
645 chemical disclosure registry, known as FracFocus, developed by
646 the Ground Water Protection Council and the Interstate Oil and
647 Gas Compact Commission, as the state's registry for chemical
648 disclosure for all wells on which high-pressure well
649 stimulations are performed. The department shall provide a link
650 to FracFocus through its website.

651 (b) In addition to providing the following information to
652 the department as part of the permitting process, a service
653 provider, vendor, or well owner or operator shall report, as
654 established by department rule, to the department, at a minimum,
655 the following information:

656 1. The name of the service provider, vendor, or owner or
657 operator.

658 2. The date of completion of the high-pressure well
659 stimulation.

660 3. The county in which the well is located.

661 4. The API Well Number.

662 5. The well name and number.

663 6. The longitude and latitude of the wellhead.

664 7. The total vertical depth of the well.

665 8. The total volume of water used in the high-pressure
666 well stimulation.

667 9. Each chemical ingredient that is subject to 29 C.F.R.

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Amendment No.

668 s. 1910.1200(g)(2) and the ingredient concentration in the high-
669 pressure well stimulation fluid by mass for each well on which a
670 high-pressure well stimulation is performed.

671 10. The trade or common name and the CAS Registry Number
672 for each chemical ingredient.

673 (c) The department shall report to FracFocus all
674 information received under paragraph (b), excluding any
675 information subject to chapter 688.

676 (d) If FracFocus cannot accept and make publicly available
677 any information specified in this section, the department shall
678 post the information on its website, excluding any information
679 subject to chapter 688.

680 (2) A service provider, vendor, or well owner or operator
681 shall:

682 (a) Report the information required under subsection (1)
683 to the department within 60 days after the initiation of the
684 high-pressure well stimulation for each well on which such high-
685 pressure well stimulation is performed.

686 (b) Notify the department if any chemical ingredient not
687 previously reported is intentionally included and used for the
688 purpose of performing a high-pressure well stimulation.

689 (3) This section does not apply to an ingredient that:

690 (a) Is not intentionally added to the high-pressure well
691 stimulation; or

692 (b) Occurs incidentally or is otherwise unintentionally
693 present in a high-pressure well stimulation.

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Amendment No.

694 (4) The department shall adopt rules to administer this
695 section.

696 Section 11. Section 377.07, Florida Statutes, is amended
697 to read:

698 377.07 Division of Water Resource Management; powers,
699 duties, and authority.—The Division of Water Resource Management
700 of the Department of Environmental Protection is ~~hereby~~ vested
701 with power, authority, and duty to administer, carry out, and
702 enforce ~~the provisions of this part law as directed in s.~~
703 ~~370.02(3).~~

704 Section 12. Section 377.10, Florida Statutes, is amended
705 to read:

706 377.10 Certain persons not to be employed by division.—A
707 ~~No~~ person in the employ of, or holding any official connection
708 or position with any person, firm, partnership, corporation, or
709 association of any kind, engaged in the business of buying or
710 selling mineral leases, drilling wells in the search of oil or
711 gas, producing, transporting, refining, or distributing oil or
712 gas may not shall hold any position under, or be employed by,
713 the Division of Water Resource Management in the prosecution of
714 its duties under this part law.

715 Section 13. Subsection (1) of section 377.243, Florida
716 Statutes, is amended to read:

717 377.243 Conditions for granting permits for extraction
718 through well holes.—

719 (1) Before applying ~~Prior to the application~~ to the



Amendment No.

720 Division of Water Resource Management for the permit to drill
721 for oil, gas, and related products referred to in s. 377.242(1),
722 the applicant must own a valid deed, or other muniment of title,
723 or lease granting the ~~said~~ applicant the privilege to explore
724 for oil, gas, or related mineral products to be extracted only
725 through the well hole on the land or lands included in the
726 application. However, unallocated interests may be unitized
727 according to s. 377.27.

728 Section 14. Subsection (1) of section 377.244, Florida
729 Statutes, is amended to read:

730 377.244 Conditions for granting permits for surface
731 exploratory and extraction operations.-

732 (1) Exploration for and extraction of minerals under ~~and~~
733 ~~by virtue of~~ the authority of a grant of oil, gas, or mineral
734 rights, or which, subsequent to such grant, may ~~be interpreted~~
735 ~~to~~ include the right to explore for and extract minerals which
736 are subject to extraction from the land by means other than
737 through a well hole, that is by means of surface exploratory and
738 extraction operations such as sifting of the sands, dragline,
739 open pit mining, or other type of surface operation, which would
740 include movement of sands, dirt, rock, or minerals, shall be
741 exercised only pursuant to a permit issued by the Division of
742 Water Resource Management upon the applicant's compliance
743 ~~applicant complying~~ with the following conditions:

744 (a) The applicant must own a valid deed, or other muniment
745 of title, or lease granting the applicant the right to explore



Amendment No.

746 for and extract oil, gas, and other minerals from the said
747 lands.

748 (b) The applicant shall post a good and sufficient surety
749 bond with the division in such amount as the division determines
750 ~~may determine~~ is adequate to afford full and complete protection
751 for the owner of the surface rights of the lands described in
752 the application, conditioned upon the full and complete
753 restoration, by the applicant, of the area over which the
754 exploratory and extraction operations are conducted to the same
755 condition and contour in existence before ~~prior to~~ such
756 operations.

757 Section 15. For the 2016-2017 fiscal year, the sum of \$1
758 million in nonrecurring funds is appropriated from the General
759 Revenue Fund to the Department of Environmental Protection to
760 conduct a high-pressure well stimulation study pursuant to s.
761 377.2436, Florida Statutes.

762 Section 16. This act shall take effect July 1, 2016.

763
764 -----

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

766 Remove everything before the enacting clause and insert:
767 An act relating to the regulation of oil and gas resources;
768 amending s. 377.06, F.S.; preempting the regulation of all
769 matters relating to the exploration, development, production,
770 processing, storage, and transportation of oil and gas;
771 declaring existing ordinances and regulations relating thereto



Amendment No.

772 void; providing an exception for certain zoning ordinances;
773 amending s. 377.19, F.S.; applying the definitions of certain
774 terms to additional sections of ch. 377, F.S.; revising the
775 definition of the term "division"; conforming a cross-reference;
776 defining the term "high-pressure well stimulation"; amending s.
777 377.22, F.S.; revising the rulemaking authority of the
778 Department of Environmental Protection; amending s. 377.24,
779 F.S.; requiring that a permit be obtained before the performance
780 of a high-pressure well stimulation; specifying that a permit
781 may authorize single or multiple activities; requiring the
782 applicant to notify municipalities of permit applications within
783 their jurisdictional boundaries; deleting provisions that
784 prohibit the Division of Water Resource Management from granting
785 permits to drill gas or oil wells within the limits of a
786 municipality without approval of the governing authority of the
787 municipality; prohibiting the department from approving permits
788 for high-pressure well stimulation until certain rules are
789 adopted and take effect; requiring legislative ratification of
790 such rules; amending s. 377.241, F.S.; requiring the Division of
791 Water Resource Management to give consideration to and be guided
792 by certain additional criteria when issuing permits; amending s.
793 377.242, F.S.; authorizing the department to issue permits for
794 the performance of a high-pressure well stimulation; revising
795 permit requirements that permit holders agree not to prevent
796 division inspections; amending s. 377.2425, F.S.; requiring an
797 applicant or operator to provide surety that performance of a

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Amendment No.



798 high-pressure well stimulation will be conducted in a safe and
799 environmentally compatible manner; creating s. 377.2436, F.S.;
800 requiring the department to conduct a study on high-pressure
801 well stimulation; providing study criteria; requiring the study
802 to be submitted to the Governor and Legislature and posted on
803 the department website; prohibiting the department from adopting
804 rules until the study has been submitted to the Legislature;
805 requiring the department to adopt rules under certain conditions
806 by a specified date; amending s. 377.37, F.S.; increasing the
807 maximum amount of a civil penalty; creating s. 377.45, F.S.;
808 requiring the department to designate the national chemical
809 disclosure registry as the state's registry; requiring service
810 providers, vendors, and well owners or operators to report
811 certain information to the department; requiring the department
812 to report certain information to the national chemical registry;
813 providing applicability; requiring the department to adopt
814 rules; amending ss. 377.07, 377.10, 377.243, and 377.244, F.S.;
815 making technical changes; conforming provisions to changes made
816 by the act; providing an appropriation; providing an effective
817 date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Public Records
SPONSOR(S): Government Operations Subcommittee; Beshears and Kerner
TIED BILLS: IDEN./SIM. BILLS: CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Moore	Williamson
2) State Affairs Committee		Moore, A. 	Camechis 

SUMMARY ANALYSIS

The State Constitution and Florida Statutes govern access to records of state and local agencies. Current law in part defines terms, provides for assessment of certain fees associated with responding to public record requests, requires certain contracts with public agencies to contain provisions regarding public records, and provides for the assessment of attorney fees for an agency found in violation of the public records law. Private contractors who act on behalf of a public agency are required to comply with public records laws in the same manner as a public agency.

This bill requires a public agency contract for services with a contractor to include a statement in large, boldface font informing the contractor of the contact information of the public agency's custodian of public records (records custodian) and instructing the contractor to contact the agency records custodian concerning any questions the contractor may have regarding the contractor's duties to provide public records relating to the contract.

The bill repeals the requirement that each contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon completion of the contract.

The bill requires a request for public records relating to a contract for services to be made directly to the contracting agency. If the agency determines that it does not possess the records, it must immediately notify the contractor and the contractor must provide the records or allow access to the records within a reasonable time. A contractor who fails to provide the records to the agency within a reasonable time may be subject to certain penalties.

The bill provides that if a civil action is filed to compel production of public records, the court must assess and award against the contractor the reasonable costs of enforcement, including attorney fees, if the court determines that a contractor unlawfully refused to comply with the public records request within a reasonable time, and the plaintiff provided written notice of the public records request to the public agency and the contractor. The notice must be sent at least 8 business days before the plaintiff files the civil action. The bill specifies that a contractor who complies with the public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

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

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records and Private Contractors

Section 119.0701, F.S., Contracts and Public Records

Public agencies, which include local and statewide governmental entities, as well as municipal officers, are permitted to hire contractors to provide services or act on behalf of the public agency.³ Contractors can be individuals or business entities.⁴ Private contractors who act on behalf of a public agency are required by the law and the terms of their contracts to comply with public records laws in the same manner as a public agency.⁵

Current law does not provide a definition for "acting on behalf of a public agency." When determining whether a private entity is acting on behalf of a public agency, the courts have relied on a "totality of factors" analysis.⁶ The factors include, but are not limited to, the level of public funding, whether the services contracted for are an integral part of the public agency's decision-making process, whether the private entity is performing a governmental function or a function that the public agency otherwise would perform, and the extent of the public agency's involvement with, regulation of, or control over the private entity.⁷

Section 119.0701, F.S., requires each public agency contract for services to include certain provisions that require the contractor to comply with public records laws. Specifically, the contract must require the contractor to:

- Keep and maintain public records that would be required by the agency to perform the service;
- Provide the public with access to public records on the same terms that the agency would;

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.0701(1)(b), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992); Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

⁴ Section 119.0701(1)(a), F.S.

⁵ Section 119.0701, F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁶ See, e.g., *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁷ *Id.*

- Ensure that public records that are exempt or confidential and exempt are not improperly disclosed; and
- Meet certain public records retention and transfer requirements.

Upon the completion of a contract, the contract for services must provide for the transfer of public records from the contractor to the public agency at no cost to the public agency.⁸ The contractor is not permitted to retain any public records that are confidential and exempt or exempt from public records disclosure.⁹ Records that are stored electronically must be transferred to the public agency in a format that is compatible with the public agency's information technology systems.¹⁰

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.¹¹

Section 287.058, F.S., Contract Document

For state agencies,¹² every procurement of contractual services in excess of \$35,000, except for specified procurements pertaining to health and human services, must be evidenced by a written agreement (contract) embodying all provisions and conditions of such services.¹³ The contract must be signed by the agency head or designee and the contractor before the rendering of any contractual service, except in the case of an emergency.¹⁴

Section 287.058(1), F.S., provides provisions that must be included in the contract document. With regard to public record requirements, the contract document must allow for unilateral cancellation by the state agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from public record requirements.¹⁵

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,¹⁶ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.¹⁷

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the

⁸ Section 119.0701(2)(d), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 119.0701(3), F.S.

¹² For purposes of chapter 287, F.S., agency does not include the university and college boards of trustees or the state universities and colleges.

¹³ Section 287.058(1), F.S.

¹⁴ Section 287.058(2), F.S.

¹⁵ Section 287.058(1)(c), F.S.

¹⁶ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

¹⁷ *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

request.¹⁸ The term “labor cost” includes the entire labor cost, including benefits in addition to wages or salary.¹⁹ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.²⁰

Enforcing Public Records Laws and Attorney Fees

If a public agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.²¹ Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.²²

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.²³ Once an enforcement action has been filed, a public agency, or a contractor acting on behalf of a public agency, can be held liable for attorney fees even after the public agency has produced the requested records.²⁴ The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.²⁵ Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests.²⁶

If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay for the requestor’s reasonable costs of enforcement, including reasonable attorney fees.²⁷ If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records.²⁸ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor’s attorney fees in the same manner that a public agency would be liable.²⁹ Attorney fees for efforts expended to obtain attorney fees are not currently permitted.³⁰

A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept,³¹ and it is immaterial if a records custodian did not willfully refuse to provide a public record.³² In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.³³

¹⁸ Section 119.07(4)(d), F.S.

¹⁹ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

²⁰ Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating if a requestor identifies a record with sufficient specificity to permit [an agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record).

²¹ Section 119.11, F.S.

²² *Id.*

²³ Section 119.12, F.S.

²⁴ *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

²⁵ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

²⁶ *Id.*

²⁷ Section 119.12, F.S.

²⁸ See *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993).

²⁹ See s. 119.12, F.S.; see also *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

³⁰ *Downs v. Austin*, 559 So. 2d 246, 248 (Fla. 1st DCA 1990).

³¹ *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

³² *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

³³ Section 284.30, F.S.

Recent Litigation

On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.³⁴ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”³⁵

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”³⁶ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”³⁷ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.³⁸

The case was affirmed by the First District Court of Appeal on December 16, 2015.³⁹

Effect of Proposed Changes

The bill requires a public agency contract for services with a contractor to include a statement in large, boldface font informing the contractor of the contact information of the public agency’s records custodian and instructing the contractor to contact the agency records custodian concerning any questions the contractor may have regarding the contractor’s duties to provide public records relating to the contract. The statement must include the telephone number, e-mail address, and mailing address for the records custodian.

The bill repeals the requirement that each contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon completion of the contract. If the contractor keeps and maintains public records upon completion of the contract, the contractor must meet all applicable requirements for retaining public records. If requested by the public agency, all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

³⁴ *Jeffery Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, 2015 WL 9091680 (Fla. 1st DCA 2015).

The bill requires the additional contract requirements to be included in contracts entered into or amended on or after July 1, 2016.

The bill requires a request for public records relating to a contract for services to be made directly to the contracting public agency. If the public agency determines that it does not possess the records, it must immediately notify the contractor and the contractor must provide the records or allow access to the records within a reasonable time. A contractor who fails to provide the records to the public agency within a reasonable time may be subject to penalties under s. 119.10, F.S. Section 119.10(2), F.S., provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.

The bill provides that if a civil action is filed to compel production of public records, the court must assess and award against the contractor the reasonable costs of enforcement, including attorney fees, if the court determines that a contractor unlawfully refused to comply with the public records request within a reasonable time, and the plaintiff provided written notice of the public records request to the public agency and the contractor. A notice is in compliance if it is sent to the public agency's records custodian and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. The notice must be sent at least 8 business days before the plaintiff files the civil action, and must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail. The postage or shipping must be paid by the sender and must include evidence of delivery, which may be in an electronic format.

The bill specifies that a contractor who complies with the public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0701, F.S., relating to public agency contracts for services and public records.

Section 2 provides an effective date of upon becoming a law.

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:

It is unclear what costs might be associated with a contractor maintaining public records upon termination of a contract for services in lieu of transferring the public records to the records custodian.

In addition, a person requesting public records may incur attorney fees that cannot be recovered from the contractor if the contractor provides the requested records within 8 business days after the notice to compel production of records is sent to the contractor and the public agency.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take 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 December 2, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Removes the requirement for an agency to designate a custodian of public records;
- Requires a request for public records associated with a contract for services to be made directly to the contracting agency;
- Removes the requirement that a public records request be made to specified employees of a contractor in order for a contractor to be liable for attorney fees;
- Provides circumstances under which a contractor may be responsible for the reasonable costs of enforcement and attorney fees in a civil action that is filed to compel production of public records; and
- Specifies that a contractor who complies with a public records request under certain circumstances is not liable for the reasonable costs of enforcement in the civil action.

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

27 119.0701 Contracts; public records; request for contractor
 28 records; civil action.—

29 (1) DEFINITIONS.—For purposes of this section, the term:

30 (a) "Contractor" means an individual, partnership,
 31 corporation, or business entity that enters into a contract for
 32 services with a public agency and is acting on behalf of the
 33 public agency as provided under s. 119.011(2).

34 (b) "Public agency" means a state, county, district,
 35 authority, or municipal officer, or department, division, board,
 36 bureau, commission, or other separate unit of government created
 37 or established by law.

38 (2) CONTRACT REQUIREMENTS.—In addition to other contract
 39 requirements provided by law, each public agency contract for
 40 services entered into or amended on or after July 1, 2016, must
 41 include:

42 (a) The following statement, in substantially the
 43 following form, identifying the contact information of the
 44 public agency's custodian of public records in at least 14-point
 45 boldfaced type:

46
 47 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
 48 CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
 49 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
 50 CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-mail
 51 address, and mailing address)....
 52

53 **(b)** A provision that requires the contractor to comply
 54 with public records laws, specifically to:

55 **1.(a)** Keep and maintain public records ~~that ordinarily and~~
 56 ~~necessarily would be~~ required by the public agency ~~in order to~~
 57 perform the service.

58 **2.(b)** Upon request from the public agency's custodian of
 59 public records, provide the public agency with a copy of the
 60 requested records or allow the access to public records to be
 61 inspected or copied within a reasonable time on the same terms
 62 ~~and conditions that the public agency would provide the records~~
 63 ~~and~~ at a cost that does not exceed the cost provided in this
 64 chapter or as otherwise provided by law.

65 **3.(e)** Ensure that public records that are exempt or
 66 confidential and exempt from public records disclosure
 67 requirements are not disclosed except as authorized by law for
 68 the duration of the contract term and following completion of
 69 the contract if the contractor does not transfer the records to
 70 the public agency.

71 **4.(d)** Upon completion of the contract, Meet all
 72 ~~requirements for retaining public records and transfer, at no~~
 73 ~~cost, to the public agency all public records in possession of~~
 74 ~~the contractor~~ or keep and maintain public records required by
 75 the public agency to perform the service. If the contractor
 76 transfers all public records to the public agency upon
 77 completion of the contract, the contractor shall upon
 78 ~~termination of the contract and~~ destroy any duplicate public

79 records that are exempt or confidential and exempt from public
 80 records disclosure requirements. If the contractor keeps and
 81 maintains public records upon completion of the contract, the
 82 contractor shall meet all applicable requirements for retaining
 83 public records. All records stored electronically must be
 84 provided to the public agency, upon request from the public
 85 agency's custodian of public records, in a format that is
 86 compatible with the information technology systems of the public
 87 agency.

88 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.-

89 (a) A request to inspect or copy public records relating
 90 to a public agency's contract for services must be made directly
 91 to the public agency. If the public agency does not possess the
 92 requested records, the public agency shall immediately notify
 93 the contractor of the request, and the contractor must provide
 94 the records to the public agency or allow the records to be
 95 inspected or copied within a reasonable time.

96 (b) ~~(3)~~ If a contractor does not comply with the a public
 97 agency's ~~records~~ request for records, the public agency shall
 98 enforce the contract provisions in accordance with the contract.

99 (c) A contractor who fails to provide the public records
 100 to the public agency within a reasonable time may be subject to
 101 penalties under s. 119.10.

102 (4) CIVIL ACTION.-

103 (a) If a civil action is filed against a contractor to
 104 compel production of public records relating to a public

105 agency's contract for services, the court shall assess and award
 106 against the contractor the reasonable costs of enforcement,
 107 including reasonable attorney fees, if:

108 1. The court determines that the contractor unlawfully
 109 refused to comply with the public records request within a
 110 reasonable time; and

111 2. At least 8 business days before filing the action, the
 112 plaintiff provided written notice of the public records request,
 113 including a statement that the contractor has not complied with
 114 the request, to the public agency and to the contractor.

115 (b) A notice complies with subparagraph (a)2. if it is
 116 sent to the public agency's custodian of public records and to
 117 the contractor at the contractor's address listed on its
 118 contract with the public agency or to the contractor's
 119 registered agent. Such notices must be sent by common carrier
 120 delivery service or by registered, Global Express Guaranteed, or
 121 certified mail, with postage or shipping paid by the sender and
 122 with evidence of delivery, which may be in an electronic format.

123 (c) A contractor who complies with a public records
 124 request within 8 business days after the notice is sent is not
 125 liable for the reasonable costs of enforcement.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Contaminated Sites
SPONSOR(S): Drake
TIED BILLS: IDEN./SIM. BILLS: CS/SB 92

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

SUMMARY ANALYSIS

Contaminated sites are any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment. Brownfield sites are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.

“Global Risk-Based Corrective Action” or “Global RBCA” requires risk-based corrective action (RBCA) to be applied to all contaminated sites in Florida, except if program specific cleanup requirements apply. 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, engineering controls, or any combination thereof 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 and brownfield program specific cleanup statutes 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;
- Require DEP rules 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 if it is shown that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria;
- Allow the use of risk assessment modeling and probabilistic risk assessment to create site-specific alternative 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

Contaminated sites are any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.¹ Prior to 2003, Florida used risk based corrective action (RBCA) (pronounced “Rebecca”) 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”).² The program sites made up approximately 90 percent of all of the contaminated sites in Florida.³

RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds.⁴ 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.⁵

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.⁶ These sites were required to be remediated to default cleanup target levels (CTLs).⁷ 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.⁸ DEP developed the CTLs based on human health and aesthetic factors.⁹ Aesthetic considerations include altered taste, odor, or color of the water.¹⁰ This approach offered little flexibility to provide site-specific remediation strategies, was inefficient,¹¹ and created a significant expense.¹²

Global RBCA

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.¹³ Chapter 62-777, F.A.C., provides the default CTLs and a methodology for RBCA.¹⁴

¹ Section 376.301(10), F.S.

² Charles F. Mills III, *Global RBCA: Its Implementation, Foundation in Risk-Based Theory, and Implications*, 22 J. Land Use & Envtl. L. 101, 116 (Fall 2006).

³ *Id.* at 117.

⁴ *Id.* at 102.

⁵ 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.

⁶ Mills, *supra* note 2, 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).

⁷ DeMeo, *supra* note 5, at 47.

⁸ Section 376.301(7), F.S.

⁹ DEP, *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.

¹⁰ *Id.*

¹¹ DeMeo, *supra* note 5, at 47.

¹² Mills, *supra* note 2, at 133.

¹³ *Id.* at 102.

¹⁴ *Id.* at 118.

Global RBCA does not apply to contaminated sites subject to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs.¹⁵ These programs provide financial and regulatory incentives to facilitate cleanup, and are subject to RBCA criteria established for the specific program.¹⁶

In 2005, DEP adopted rules to implement Global RBCA.¹⁷ 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.¹⁸ In 2013, DEP consolidated the contamination site cleanup criteria for petroleum contamination,¹⁹ drycleaning solvents,²⁰ brownfield cleanup,²¹ and all other contaminated sites²² into the Global RBCA rule chapter.²³

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.²⁴ 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.²⁵ This includes establishing any background concentrations of contaminations.²⁶ Background concentrations are concentrations of contaminants that are naturally occurring in the groundwater, surface water, soil, or sediment in the vicinity of the site.²⁷ DEP cannot require site rehabilitation to achieve a CTL for any contaminant more stringent than the naturally occurring background contamination.²⁸

Once a responsible party completes a site assessment, it has three Risk Management Options (RMOs) available to perform site rehabilitation to achieve a NFA order. Under the RMO options, the responsible party must either rehabilitate the site to the default CTLs established in ch. 62-777, F.A.C., or to the alternative CTLs established through a risk assessment. Responsible parties may choose to create their own alternative CTLs when present and future use of the site and site exposure characteristics differ greatly from those utilized to calculate the default CTLs such that the default CTLs are overly conservative or not conservative enough.²⁹

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.³⁰ 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.³¹ 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.³²

¹⁵ Section 376.30701(1)(b), F.S.

¹⁶ See ss. 376.3071, 376.7078, and 376.83, F.S.

¹⁷ DeMeo, *supra* note 5, at 47.

¹⁸ *Id.*

¹⁹ Former ch. 62-770, F.A.C.

²⁰ Former ch. 62-782, F.A.C.

²¹ Former ch. 62-785, F.A.C.

²² Chapter 62-780, F.A.C.

²³ Notice of Rule Development, 39 Fla. Admin. R. 105 (May 30, 2013).

²⁴ Rule 62-780.210, F.A.C.

²⁵ Rule 62-780.600, F.A.C.

²⁶ Rule 62-780.600(3)(d), F.A.C.

²⁷ Rule 62-780.200(3), F.A.C.

²⁸ Section 376.30701(2)(g) and (i), F.S.

²⁹ DEP, *supra* note 9, at 43-44.

³⁰ Mills, *supra* note 2, at 125; rule 62-780.680(1), F.A.C.

³¹ *Id.*; rule 62-780.680(2), F.A.C.

³² *Id.*; rule 62-780.680(3), F.A.C.

Under each RMO, responsible parties may use several methods to rehabilitate the site to achieve a NFA order. 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.³³ Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.³⁴ 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 for further migration in relation to the site's property boundary.³⁵

Natural attenuation monitoring is allowable 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;
 - A scientific evaluation of the contamination plume migration, an estimate of the annual reduction in contaminant concentrations, and the estimated time to meet NFA; and
 - A life-cycle cost analysis of remedial alternatives.³⁶

Brownfield Redevelopment Act

A brownfield is real property, generally abandoned, idled, or underused industrial and commercial property, where expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.³⁷ In 1995, the Environmental Protection Agency (EPA) created the Brownfields Program to manage contaminated property through site remediation and redevelopment.³⁸ EPA's Brownfields Program provides grants and technical assistance to communities, states, tribes, and other stakeholders, giving them the resources they need to prevent, assess, safely clean up, and sustainably reuse brownfields.³⁹

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).⁴⁰ The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of

³³ Section 376.301(24), F.S.

³⁴ Id.

³⁵ Rule 62-780.690(1), F.A.C.

³⁶ Id.

³⁷ Section 288.107(1)(b), F.S.; EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

³⁸ EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

³⁹ EPA, *Brownfields*, <http://www2.epa.gov/brownfields> (last visited November 6, 2015).

⁴⁰ Chapter 97-173, Laws of Florida.

brownfield sites to improve public health and reduce environmental hazards.⁴¹ The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.⁴² Since inception of the Act, 78 contaminated sites have been cleaned up, more than 75,000 confirmed and projected direct and indirect jobs have been created, and \$2.7 billion in capital investment is projected in designated brownfield areas.⁴³

Effect of Proposed Changes

This bill makes several revisions to the Global RBCA and Brownfield program specific cleanup statutes.

The bill amends ss. 376.301 and 376.79, F.S., to add a definition for “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 conforming changes to remove references to “naturally occurring” in front of “background concentration.”

Currently, DEP may not require a responsible party performing site rehabilitation to achieve a CTL for any contaminant more stringent than the background contamination. DEP’s 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.⁴⁴ The EPA guidance requires that the anthropogenic background contamination be unrelated to the release of hazardous substances at the contaminated site.⁴⁵ Under the proposed change, responsible parties would only be required to rehabilitate their contaminated sites for the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation.

The bill defines “long-term natural attenuation” to mean natural attenuation approved by DEP as a site rehabilitation program task that lasts more than five years. The bill also amends subsections 376.30701(2) and 376.81(1), F.S., to require DEP’s Global RBCA rules to include protocols for long-term natural attenuation.⁴⁶

The bill amends paragraphs 376.30701(2)(e) and 376.81(1)(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.⁴⁷

The bill amends subparagraphs 376.30701(2)(g)2. and 376.81(1)(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

⁴¹ DEP, Florida Brownfields Redevelopment Act – Annual Report p. 4, http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2015/2014-15_FDEP_Annual.pdf (last visited November 6, 2015).

⁴² Section 376.82, F.S.

⁴³ DEP, *supra* note 41, at 2.

⁴⁴ See EPA, *Transmittal of Policy Statement: “Role of Background in CERCLA Cleanup Program” OSWER 9285.6-07P* (May 2002), available at http://rais.ornl.gov/documents/bkgpol_jan01.pdf (last visited November 5, 2015); EPA, *Guidance for Comparing Background and Chemical Concentrations in Soil for CERCLA Sites OSWER 9285.7-41* (September 2002), available at https://dec.alaska.gov/spar/csp/guidance_forms/docs/background.pdf (last visited November 5, 2015).

⁴⁵ *Id.*

⁴⁶ Rule 62-780.690, F.A.C., limits natural attenuation to a five-year period. However, the rule permits natural attenuation for a longer period if the appropriateness of natural attenuation is demonstrated through technical and scientific evaluation.

⁴⁷ Rule 62-780.650(1)(c)3., F.A.C., allows this methodology when creating a risk characterization as part of a risk assessment.

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 subparagraphs 376.30701(2)(g)3., 376.30701(2)(i)3., 376.81(1)(g)3., and 376.81(1)(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.⁴⁸ This method is different from the point estimate risk assessment for single values because it uses multiple variables.⁴⁹ The EPA uses this new method of risk assessment when evaluating risk at contaminated sites it regulates.⁵⁰

The bill also amends subparagraph 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,⁵¹ 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
- The property owner does not object to the NFA proposal to DEP or the local pollution control program.

A brownfield contaminated site may already use alternative CTLs without institutional controls if they meet the criteria above.⁵²

Lastly, the bill amends ss. 196.1995(3), 287.0595(1)(a), and 288.1175(5)(c), F.S., to correct cross references.

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 RBCA principles to contaminated sites.
- Section 3.** Amending s. 376.79, F.S., relating to brownfields redevelopment definitions.
- Section 4.** Amending s. 376.81, F.S., relating to brownfield site and brownfield areas contamination cleanup criteria.
- Section 5.** Amending s. 196.1195, F.S., correcting a cross reference.

⁴⁸ EPA, *Risk Assessment Guidance for Superfund: Volume III – Part A, Process for Conducting Probabilistic Risk Assessment at 1-3* (December 2001) available at <http://www2.epa.gov/risk/risk-assessment-guidance-superfund-rags-volume-iii-part> (last visited November 5, 2015).

⁴⁹ *Id.* at 1-7.

⁵⁰ *See Id.* Rule 62-780.650(3), F.A.C., allows the use of PRA to perform risk assessment when establishing alternative CTLs.

⁵¹ “Organoleptic” means pertaining to, or perceived by, a sensory organ (i.e., color, taste, or odor). Rule 62-780.200(28), F.A.C.

⁵² Section 376.81(1)(g)3., F.S.

Section 6. Amending s. 287.0595, F.S., correcting a cross reference.

Section 7. Amending s. 288.1175, F.S., correcting a cross reference.

Section 8. Providing an effective date of July 1, 2016.

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 changes in the bill. The impact can be absorbed by existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Applicability

The changes in the bill primarily apply to waste cleanup sites and brownfield cleanup sites. The contaminated site cleanup criteria for petroleum contamination sites and drycleaning contamination sites are found in subsections 376.3071(5) and 376.3078(4), F.S., respectively. Thus, subsections 376.3071(5) and 376.3078(4), F.S., may need to be amended to apply the new criteria to all contaminated sites in Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

27 Section 1. Present subsections (4) through (22) of section
 28 376.301, Florida Statutes, are redesignated as subsections (5)
 29 through (23), respectively, present subsections (23) through
 30 (48) of that section are redesignated as subsections (25)
 31 through (50), respectively, and new subsections (4) and (24) are
 32 added to that section, to read:

33 376.301 Definitions of terms used in ss. 376.30-376.317,
 34 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
 35 376.75, unless the context clearly requires otherwise, the term:

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

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

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

46 376.30701 Application of risk-based corrective action
 47 principles to contaminated sites; applicability; legislative
 48 intent; rulemaking authority; contamination cleanup criteria;
 49 limitations; reopeners.—

50 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
 51 the intent of the Legislature to protect the health of all
 52 people under actual circumstances of exposure. By July 1, 2004,

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

79 rehabilitation program, must:

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

86 (b) Establish the point of compliance at the source of the
 87 contamination. However, the department may ~~is authorized to~~
 88 temporarily move the point of compliance to the boundary of the
 89 property, or to the edge of the plume when the plume is within
 90 the property boundary, while cleanup, including cleanup through
 91 natural attenuation processes in conjunction with appropriate
 92 monitoring, is proceeding. The department may ~~also is~~
 93 ~~authorized,~~ pursuant to criteria provided in this section, ~~to~~
 94 temporarily extend the point of compliance beyond the property
 95 boundary with appropriate monitoring, if such extension is
 96 needed to facilitate natural attenuation or to address the
 97 current conditions of the plume, provided human health, public
 98 safety, and the environment are protected. When temporarily
 99 extending the point of compliance beyond the property boundary,
 100 it cannot be extended further than the lateral extent of the
 101 plume, if known, at the time of execution of a cleanup
 102 agreement, if required, or the lateral extent of the plume as
 103 defined at the time of site assessment. Temporary extension of
 104 the point of compliance beyond the property boundary, as

105 provided in this paragraph, must include actual notice by the
 106 person responsible for site rehabilitation to local governments
 107 and the owners of any property into which the point of
 108 compliance is allowed to extend and constructive notice to
 109 residents and business tenants of the property into which the
 110 point of compliance is allowed to extend. Persons receiving
 111 notice pursuant to this paragraph shall have the opportunity to
 112 comment within 30 days after receipt of the notice. Additional
 113 notice concerning the status of natural attenuation processes
 114 shall be similarly provided to persons receiving notice pursuant
 115 to this paragraph every 5 years.

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

130 (d) Allow the use of institutional or engineering controls

131 | at contaminated sites being cleaned up pursuant to this section,
 132 | where appropriate, to eliminate or control the potential
 133 | exposure to contaminants of humans or the environment. The use
 134 | of controls must be preapproved by the department and only after
 135 | constructive notice and opportunity to comment within 30 days
 136 | after receipt of notice is provided to local governments, owners
 137 | of any property into which the point of compliance is allowed to
 138 | extend, and residents on any property into which the point of
 139 | compliance is allowed to extend. When institutional or
 140 | engineering controls are implemented to control exposure, the
 141 | removal of the controls must have prior department approval and
 142 | must be accompanied by the resumption of active cleanup, or
 143 | other approved controls, unless cleanup target levels under this
 144 | section have been achieved.

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

149 | (f) Take into consideration individual site
 150 | characteristics, which shall include, but not be limited to, the
 151 | current and projected use of the affected groundwater and
 152 | surface water in the vicinity of the site, current and projected
 153 | land uses of the area affected by the contamination, the exposed
 154 | population, the degree and extent of contamination, the rate of
 155 | contaminant migration, the apparent or potential rate of
 156 | contaminant degradation through natural attenuation processes,

157 the location of the plume, and the potential for further
 158 migration in relation to site property boundaries.

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

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

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

183 | body.

184 | 3. Using risk-based corrective action principles, the

185 | department shall approve alternative cleanup target levels in

186 | conjunction with institutional and engineering controls, if

187 | needed, based upon an applicant's demonstration, using site-

188 | specific or other relevant data and information, risk assessment

189 | modeling results, including results from probabilistic risk

190 | assessment modeling, risk assessment studies, risk reduction

191 | techniques, or a combination thereof, that human health, public

192 | safety, and the environment are protected to the same degree as

193 | provided in subparagraphs 1. and 2. Where a state water quality

194 | standard is applicable, a deviation may not result in the

195 | application of cleanup target levels more stringent than the

196 | standard. In determining whether it is appropriate to establish

197 | alternative cleanup target levels at a site, the department must

198 | consider the effectiveness of source removal, if any, that has

199 | been completed at the site and the practical likelihood of the

200 | use of low yield or poor quality groundwater, the use of

201 | groundwater near marine surface water bodies, the current and

202 | projected use of the affected groundwater in the vicinity of the

203 | site, or the use of groundwater in the immediate vicinity of the

204 | contaminated area, where it has been demonstrated that the

205 | groundwater contamination is not migrating away from such

206 | localized source, provided human health, public safety, and the

207 | environment are protected. Groundwater resource protection

208 | remains the ultimate goal of cleanup, particularly in light of

209 | the state's continued growth and consequent demands for drinking
 210 | water resources. The Legislature recognizes the need for a
 211 | protective yet flexible cleanup approach that risk-based
 212 | corrective action provides. Only where it is appropriate on a
 213 | site-specific basis, using the criteria in this paragraph and
 214 | careful evaluation by the department, shall proposed alternative
 215 | cleanup target levels be approved. If alternative cleanup target
 216 | levels are used, institutional controls are not required if:

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

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

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

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

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

234 | f. The real property owner does not object to the "No

235 Further Action" proposal to the department or the local
 236 pollution control program.

237 (h) Provide for the department to issue a "No Further
 238 Action" order, with conditions, including, but not limited to,
 239 the use of institutional or engineering controls where
 240 appropriate, when alternative cleanup target levels established
 241 pursuant to subparagraph (g)3. have been achieved or when the
 242 person responsible for site rehabilitation can demonstrate that
 243 the cleanup target level is unachievable with the use of
 244 available technologies. Before ~~Prior to~~ issuing such an order,
 245 the department shall consider the feasibility of an alternative
 246 site rehabilitation technology at the contaminated site.

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

258 1. In establishing soil cleanup target levels for human
 259 exposure to each contaminant found in soils from the land
 260 surface to 2 feet below land surface, the department shall apply

261 | the following, as appropriate: calculations using a lifetime
 262 | cancer risk level of 1.0E-6; a hazard index of 1 or less; and
 263 | the best achievable detection limit. However, the department may
 264 | ~~shall~~ not require site rehabilitation to achieve a cleanup
 265 | target level for an individual contaminant that is more
 266 | stringent than the site-specific, ~~naturally occurring~~ background
 267 | concentration for that contaminant. Institutional controls or
 268 | other methods shall be used to prevent human exposure to
 269 | contaminated soils more than 2 feet below the land surface. Any
 270 | removal of such institutional controls shall require such
 271 | contaminated soils to be remediated.

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

285 | 3. Using risk-based corrective action principles, the
 286 | department shall approve alternative cleanup target levels in

287 conjunction with institutional and engineering controls, if
288 needed, based upon an applicant's demonstration, using site-
289 specific or other relevant data and information, risk assessment
290 modeling results, including results from probabilistic risk
291 assessment modeling, risk assessment studies, risk reduction
292 techniques, or a combination thereof, that human health, public
293 safety, and the environment are protected to the same degree as
294 provided in subparagraphs 1. and 2.

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

307 Section 3. Present subsections (3) through (11) of section
308 376.79, Florida Statutes, are redesignated as subsections (4)
309 through (12), respectively, present subsections (12) through
310 (19) are redesignated as subsections (14) through (21),
311 respectively, and new subsections (3) and (13) are added to that
312 section, to read:

313 376.79 Definitions relating to Brownfields Redevelopment
 314 Act.—As used in ss. 376.77–376.85, the term:

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

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

323 Section 4. Section 376.81, Florida Statutes, is amended to
 324 read:

325 376.81 Brownfield site and brownfield areas contamination
 326 cleanup criteria.—

327 (1) It is the intent of the Legislature to protect the
 328 health of all people under actual circumstances of exposure. By
 329 July 1, 2001, the secretary of the department shall establish
 330 criteria by rule for the purpose of determining, on a site-
 331 specific basis, the rehabilitation program tasks that comprise a
 332 site rehabilitation program and the level at which a
 333 rehabilitation program task and a site rehabilitation program
 334 may be deemed completed. In establishing the rule, the
 335 department shall apply, to the maximum extent feasible, a risk-
 336 based corrective action process to achieve protection of human
 337 health and safety and the environment in a cost-effective manner
 338 based on the principles set forth in this subsection. The rule

339 | must prescribe a phased risk-based corrective action process
 340 | that is iterative and that tailors site rehabilitation tasks to
 341 | site-specific conditions and risks. The department and the
 342 | person responsible for brownfield site rehabilitation are
 343 | encouraged to establish decision points at which risk management
 344 | decisions will be made. The department shall provide an early
 345 | decision, when requested, regarding applicable exposure factors
 346 | and a risk management approach based on the current and future
 347 | land use at the site. The rule must ~~shall also~~ include protocols
 348 | for the use of natural attenuation, including long-term natural
 349 | attenuation where site conditions warrant, the use of
 350 | institutional and engineering controls, and the issuance of "no
 351 | further action" letters. The criteria for determining what
 352 | constitutes a rehabilitation program task or completion of a
 353 | site rehabilitation program task or site rehabilitation program
 354 | must:

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

361 | (b) Establish the point of compliance at the source of the
 362 | contamination. However, the department may ~~is authorized to~~
 363 | temporarily move the point of compliance to the boundary of the
 364 | property, or to the edge of the plume when the plume is within

365 the property boundary, while cleanup, including cleanup through
 366 natural attenuation processes in conjunction with appropriate
 367 monitoring, is proceeding. The department may ~~also is~~
 368 ~~authorized~~, pursuant to criteria provided for in this section,
 369 ~~to~~ temporarily extend the point of compliance beyond the
 370 property boundary with appropriate monitoring, if such extension
 371 is needed to facilitate natural attenuation or to address the
 372 current conditions of the plume, provided human health, public
 373 safety, and the environment are protected. When temporarily
 374 extending the point of compliance beyond the property boundary,
 375 it cannot be extended further than the lateral extent of the
 376 plume at the time of execution of the brownfield site
 377 rehabilitation agreement, if known, or the lateral extent of the
 378 plume as defined at the time of site assessment. Temporary
 379 extension of the point of compliance beyond the property
 380 boundary, as provided in this paragraph, must include actual
 381 notice by the person responsible for brownfield site
 382 rehabilitation to local governments and the owners of any
 383 property into which the point of compliance is allowed to extend
 384 and constructive notice to residents and business tenants of the
 385 property into which the point of compliance is allowed to
 386 extend. Persons receiving notice pursuant to this paragraph
 387 shall have the opportunity to comment within 30 days of receipt
 388 of the notice.

389 (c) Ensure that the site-specific cleanup goal is that all
 390 contaminated brownfield sites and brownfield areas ultimately

391 | achieve the applicable cleanup target levels provided in this
 392 | section. In the circumstances provided below, and after
 393 | constructive notice and opportunity to comment within 30 days
 394 | from receipt of the notice to local government, to owners of any
 395 | property into which the point of compliance is allowed to
 396 | extend, and to residents on any property into which the point of
 397 | compliance is allowed to extend, the department may allow
 398 | concentrations of contaminants to temporarily exceed the
 399 | applicable cleanup target levels while cleanup, including
 400 | cleanup through natural attenuation processes in conjunction
 401 | with appropriate monitoring, is proceeding, if human health,
 402 | public safety, and the environment are protected.

403 | (d) Allow brownfield site and brownfield area
 404 | rehabilitation programs to include the use of institutional or
 405 | engineering controls, where appropriate, to eliminate or control
 406 | the potential exposure to contaminants of humans or the
 407 | environment. The use of controls must be preapproved by the
 408 | department and only after constructive notice and opportunity to
 409 | comment within 30 days from receipt of notice is provided to
 410 | local governments, to owners of any property into which the
 411 | point of compliance is allowed to extend, and to residents on
 412 | any property into which the point of compliance is allowed to
 413 | extend. When institutional or engineering controls are
 414 | implemented to control exposure, the removal of the controls
 415 | must have prior department approval and must be accompanied by
 416 | the resumption of active cleanup, or other approved controls,

417 unless cleanup target levels under this section have been
 418 achieved.

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

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

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

434 1. Cleanup target levels for each contaminant found in
 435 groundwater shall be the applicable state water quality
 436 standards. Where such standards do not exist, the cleanup target
 437 levels for groundwater shall be based on the minimum criteria
 438 specified in department rule. The department shall apply the
 439 following, as appropriate, in establishing the applicable
 440 cleanup target levels: calculations using a lifetime cancer risk
 441 level of 1.0E-6; a hazard index of 1 or less; the best
 442 achievable detection limit; and nuisance, organoleptic, and

443 aesthetic considerations. However, the department ~~may shall~~ not
 444 require site rehabilitation to achieve a cleanup target level
 445 for any individual contaminant which is more stringent than the
 446 site-specific, ~~naturally occurring~~ background concentration for
 447 that contaminant.

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

458 3. Using risk-based corrective action principles, the
 459 department shall approve alternative cleanup target levels in
 460 conjunction with institutional and engineering controls, if
 461 needed, based upon an applicant's demonstration, using site-
 462 specific or other relevant data and information, risk assessment
 463 modeling results, including results from probabilistic risk
 464 assessment modeling, risk assessment studies, risk reduction
 465 techniques, or a combination thereof, that human health, public
 466 safety, and the environment are protected to the same degree as
 467 provided in subparagraphs 1. and 2. Where a state water quality
 468 standard is applicable, a deviation may not result in the

469 application of cleanup target levels more stringent than the
 470 standard. In determining whether it is appropriate to establish
 471 alternative cleanup target levels at a site, the department must
 472 consider the effectiveness of source removal, if any, which has
 473 been completed at the site and the practical likelihood of the
 474 use of low yield or poor quality groundwater, the use of
 475 groundwater near marine surface water bodies, the current and
 476 projected use of the affected groundwater in the vicinity of the
 477 site, or the use of groundwater in the immediate vicinity of the
 478 contaminated area, where it has been demonstrated that the
 479 groundwater contamination is not migrating away from such
 480 localized source, provided human health, public safety, and the
 481 environment are protected. When using alternative cleanup target
 482 levels at a brownfield site, institutional controls are ~~shall~~
 483 not ~~be~~ required if:

- 484 a. The only cleanup target levels exceeded are the
 485 groundwater cleanup target levels derived from nuisance,
 486 organoleptic, or aesthetic considerations;
- 487 b. Concentrations of all contaminants meet the state water
 488 quality standards or the minimum criteria, based on the
 489 protection of human health, provided in subparagraph 1.;
- 490 c. All of the groundwater cleanup target levels
 491 established pursuant to subparagraph 1. are met at the property
 492 boundary;
- 493 d. The person responsible for brownfield site
 494 rehabilitation has demonstrated that the contaminants will not

495 migrate beyond the property boundary at concentrations exceeding
 496 the groundwater cleanup target levels established pursuant to
 497 subparagraph 1.;

498 e. The property has access to and is using an offsite
 499 water supply and no unplugged private wells are used for
 500 domestic purposes; and

501 f. The real property owner provides written acceptance of
 502 the "no further action" proposal to the department or the local
 503 pollution control program.

504 (h) Provide for the department to issue a "no further
 505 action order," with conditions, including, but not limited to,
 506 the use of institutional or engineering controls where
 507 appropriate, when alternative cleanup target levels established
 508 pursuant to subparagraph (g)3. have been achieved, or when the
 509 person responsible for brownfield site rehabilitation can
 510 demonstrate that the cleanup target level is unachievable within
 511 available technologies. Before ~~Prior to~~ issuing such an order,
 512 the department shall consider the feasibility of an alternative
 513 site rehabilitation technology at ~~in~~ the brownfield site area.

514 (i) Establish appropriate cleanup target levels for soils.

515 1. In establishing soil cleanup target levels for human
 516 exposure to each contaminant found in soils from the land
 517 surface to 2 feet below land surface, the department shall apply
 518 the following, as appropriate: calculations using a lifetime
 519 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
 520 the best achievable detection limit. However, the department may

521 ~~shall~~ not require site rehabilitation to achieve a cleanup
 522 target level for an individual contaminant which is more
 523 stringent than the site-specific, ~~naturally occurring~~ background
 524 concentration for that contaminant. Institutional controls or
 525 other methods shall be used to prevent human exposure to
 526 contaminated soils more than 2 feet below the land surface. Any
 527 removal of such institutional controls shall require such
 528 contaminated soils to be remediated.

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

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

547 modeling results, including results from probabilistic risk
548 assessment modeling, risk assessment studies, risk reduction
549 techniques, or a combination thereof, that human health, public
550 safety, and the environment are protected to the same degree as
551 provided in subparagraphs 1. and 2.

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

563 (3) The cleanup criteria described in this section govern
564 only site rehabilitation activities occurring at the
565 contaminated site. Removal of contaminated media from a site for
566 offsite relocation or treatment must be in accordance with all
567 applicable federal, state, and local laws and regulations.

568 Section 5. Subsection (3) of section 196.1995, Florida
569 Statutes, is amended to read:

570 196.1995 Economic development ad valorem tax exemption.—

571 (3) The board of county commissioners or the governing
572 authority of the municipality that calls a referendum within its

573 | total jurisdiction to determine whether its respective
 574 | jurisdiction may grant economic development ad valorem tax
 575 | exemptions may vote to limit the effect of the referendum to
 576 | authority to grant economic development tax exemptions for new
 577 | businesses and expansions of existing businesses located in an
 578 | enterprise zone or a brownfield area, as defined in s. 376.79(5)
 579 | ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone
 580 | pursuant to s. 290.0055 has not yet been designated pursuant to
 581 | s. 290.0065, the board of county commissioners or the governing
 582 | authority of the municipality may call such referendum prior to
 583 | such designation; however, the authority to grant economic
 584 | development ad valorem tax exemptions does not apply until such
 585 | area is designated pursuant to s. 290.0065. The ballot question
 586 | in such referendum shall be in substantially the following form
 587 | and shall be used in lieu of the ballot question prescribed in
 588 | subsection (2):

589 |
 590 | Shall the board of county commissioners of this county (or the
 591 | governing authority of this municipality, or both) be authorized
 592 | to grant, pursuant to s. 3, Art. VII of the State Constitution,
 593 | property tax exemptions for new businesses and expansions of
 594 | existing businesses that are located in an enterprise zone or a
 595 | brownfield area and that are expected to create new, full-time
 596 | jobs in the county (or municipality, or both)?

597 |
 598 |Yes—For authority to grant exemptions.

599 | ...No-Against authority to grant exemptions.

600 | Section 6. Paragraph (a) of subsection (1) of section
601 | 287.0595, Florida Statutes, is amended to read:

602 | 287.0595 Pollution response action contracts; department
603 | rules.-

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

607 | (a) Procedures for determining the qualifications of
608 | responsible potential vendors prior to advertisement for and
609 | receipt of bids, proposals, or replies for pollution response
610 | action contracts, including procedures for the rejection of
611 | unqualified vendors. Response actions are those activities
612 | described in s. 376.301(39) ~~s. 376.301(37)~~.

613 | Section 7. Paragraph (c) of subsection (5) of section
614 | 288.1175, Florida Statutes, is amended to read:

615 | 288.1175 Agriculture education and promotion facility.-

616 | (5) The Department of Agriculture and Consumer Services
617 | shall competitively evaluate applications for funding of an
618 | agriculture education and promotion facility. If the number of
619 | applicants exceeds three, the Department of Agriculture and
620 | Consumer Services shall rank the applications based upon
621 | criteria developed by the Department of Agriculture and Consumer
622 | Services, with priority given in descending order to the
623 | following items:

624 | (c) The location of the facility in a brownfield site as

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625 defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as
626 defined in s. 290.004, an agriculturally depressed area as
627 defined in s. 570.74, or a county that has lost its agricultural
628 land to environmental restoration projects.

629 Section 8. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 44-49 and insert:

Section 2. Paragraph (b) of subsection (1) and subsection (2) of section 376.30701, Florida Statutes, are 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.-

(1) APPLICABILITY.-

(b) This section shall apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter or chapter 403, except for those contaminated sites subject to the risk-based



Amendment No.

18 corrective action cleanup criteria established for the
19 petroleum, brownfields, and drycleaning programs pursuant to ss.
20 376.3071, 376.81, and 376.3078, respectively. This section does
21 not apply to nonprogram petroleum-contaminated sites unless
22 application of this section is requested by the person
23 responsible for site rehabilitation.

24
25 -----
26 **T I T L E A M E N D M E N T**

27 Remove line 5 and insert:

28 amending s. 376.30701, F.S.; exempting nonprogram
29 petroleum-contaminated sites from the application of risk-
30 based corrective action principles under certain
31 circumstances; requiring the Department

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 497 State Designations
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Jenne
TIED BILLS: IDEN./SIM. BILLS: SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Gregory	Harrington
2) State Affairs Committee		Gregory	Camechis

SUMMARY ANALYSIS

In 1954, Broward County acquired the area now known as the John U. Lloyd Beach State Park, designated it as an African-American beach, and promised to make the beach accessible. However, a road was never built. By 1961, the beach still lacked tables, restrooms, shelter, and fresh water. In response, Eula Johnson, Dr. Von D. Mizell, and many others led a series of protest "wade-ins" on all white public beaches in Fort Lauderdale. Approximately 200 African American residents took part in the wade-ins between July and August 1961. These protests received national press attention. The City of Fort Lauderdale requested an injunction to end the wade-ins. The court disagreed with the municipality's position and entered an order in favor of the defendants, effectively ending segregation of public beaches. In 1973, the state designated the area as the John U. Lloyd Beach State Park in recognition of Mr. Lloyd's efforts to acquire the land for Broward County.

The bill redesignates the John U. Lloyd Beach State Park in Broward County as the Von D. Mizell-Eula Johnson State Park. Further, the bill directs the Department of Environmental Protection (DEP) to erect suitable markers to designate the area as the Von D. Mizell-Eula Johnson State Park.

The bill will likely have an insignificant negative fiscal impact on the state by requiring DEP to erect signs to reflect the renaming of the park.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

African Americans living in South Florida in the earlier part of the 20th century traveled from as far away as Palm Beach and Miami to use Fort Lauderdale's beaches, but met significant resistance from oceanfront property owners.¹ In 1946, a delegation from the Negro Professional and Business Men's League, Inc., petitioned the Board of County Commissioners "seeking a public bathing beach for colored people in Broward County."² In 1954, Broward County acquired a barrier island site, designated it for segregation, and promised to make the beach accessible.³

By 1961, the beach still lacked road access, tables, restrooms, shelter, and fresh water.⁴ In response, Eula Johnson (president of the Fort Lauderdale NAACP chapter from 1959 to 1967),⁵ Dr. Von D. Mizell, and many others led a series of protest "wade-ins" on all white public beaches in Fort Lauderdale.⁶ Approximately 200 African American residents took part in the wade-ins between July and August 1961.⁷ These protests attracted national press attention.⁸

The City of Fort Lauderdale requested an injunction to end the wade-ins.⁹ The court disagreed with the municipality's position and entered an order in favor of the defendants, effectively ending segregation of public beaches. This inspired a larger civil rights movement that soon brought integration to local schools.¹⁰

The state purchased the park from Broward County on August 23, 1973.¹¹ The state designated the Broward Beach State Recreation Area as the John U. Lloyd Beach State Park in recognition of Mr. Lloyd's efforts in acquisition of the land.¹² Mr. Lloyd served as Broward County's attorney from 1945 to 1975.¹³

Today, the park area encompasses 310 acres between the Atlantic Ocean and the Intracoastal Waterway, stretching from Port Everglades Inlet on the north to Dania on the south.¹⁴ In fiscal year 2014-2015, the John U. Lloyd Beach State Park attracted 581,850 visitors, 15th overall for state parks, and generated \$1,033,769 in revenue, 22nd overall for state parks.¹⁵

¹ Florida State Parks, *Welcome to John U. Lloyd Beach State Park*, <https://www.floridastateparks.org/park-history/Lloyd-Beach> (last visited December 3, 2015).

² Id.

³ Id.

⁴ William G. Crawford, Jr., *The Long Hard Fight for Equal Rights: A History of Broward County's Colored Beach and the Fort Lauderdale Beach 'Wade-Ins' of the Summer of 1961*, p. 30, available at <http://www.floridasbigdig.com/uploads/ColoredBeachWadeInTequesta0001.pdf> (last visited December 3, 2015).

⁵ South Florida Times, *Eula Johnson Arrived, Jim Crow Had to Go*, <http://www.sfltimes.com/uncategorized/eula-johnson-arrived-jim-crow-had-to-go> (last visited December 3, 2015).

⁶ Crawford, *supra* note 4, at 30.

⁷ Department of State, *Florida Historical Markers Programs – Marker: Broward*, <http://apps.flheritage.com/markers/markers.cfm?ID=broward> (last visited December 3, 2015).

⁸ Crawford, *supra* note 4, at 30 – 32.

⁹ Crawford, *supra* note 4.

¹⁰ Department of State, *supra* note 7.

¹¹ Florida State Parks, *supra* note 1.

¹² Chapter 76-300, Laws of Fla.

¹³ Broward County Bar Association, *History of the Broward County Courthouse*, <https://www.browardbar.org/history-of-the-broward-county-courthouse/> (last visited December 3, 2015).

¹⁴ Florida State Parks, *supra* note 1.

¹⁵ Department of Environmental Protection, Final Balance Report FY 14-15, on file with the Agriculture and Natural Resources Subcommittee.

Effect of the Proposed Changes

The bill redesignates the John U. Lloyd Beach State Park in Broward County as the Von D. Mizell–Eula Johnson State Park. Further, the bill directs DEP to erect suitable markers to designate the area as the Von D. Mizell–Eula Johnson State Park.

B. SECTION DIRECTORY:

Section 1. Redesignates the John U. Lloyd Beach State Park in Broward County as the Von D. Mizell–Eula Johnson State Park.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have an insignificant negative fiscal impact on the state by requiring DEP to erect signs to reflect the renaming of the park. DEP may also have to change the name of the park on promotional and other materials.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Naming Conventions

Florida state parks are typically named with their use in the middle of the name (e.g., Alfred B. McClay Gardens State Park; Stump Pass Beach State Park). The name in the bill does not follow that naming convention.


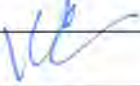
IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2016, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with committee substitute. The amendment added Dr. Von D. Mizell to the name of the state park to redesignate the park the "Von D. Mizell–Eula Johnson State Park."

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 851 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Drake
TIED BILLS: IDEN./SIM. **BILLS:** SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 1 N, As CS	Moore, R.	Harrington
2) State Affairs Committee		Moore, R. 	Camechis 

SUMMARY ANALYSIS

There are approximately 2.6 million onsite sewage treatment and disposal systems (OSTDSs), more commonly known as septic tanks, serving approximately 30 percent of the state's population. Each year, nearly 100,000 OSTDSs are pumped out, generating approximately 100 million gallons of septage. Septage is the mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping or cleaning of an OSTDS. Approximately 40 percent of Florida's septage is treated at a Department of Health (DOH) permitted septage treatment facility and applied to a land application site, which is also permitted by DOH. The remaining septage is treated at a Department of Environmental Protection (DEP) regulated domestic wastewater treatment plant or disposed of in a DEP regulated Class I landfill.

Beginning June 30, 2016, OSTDS septage may not be applied to a land application site. The bill eliminates the upcoming prohibition on the land application of septage.

The bill may have a positive fiscal impact on the private sector because the treatment of and subsequent land application of septage is less costly than using alternative methods (e.g., treatment at a wastewater treatment plant or disposal in a Class I landfill).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Each person in the state generates approximately 100 gallons of domestic wastewater¹ per day.² This wastewater must be managed to protect public health, water quality, recreation, fish and wildlife, and the aesthetic appeal of our waterways.³ In Florida, domestic wastewater is treated by onsite sewage treatment and disposal systems⁴ (OSTDSs), commonly referred to as septic tanks, or by centralized domestic wastewater treatment plants⁵ (WWTPs).⁶

The Department of Health (DOH) is responsible for regulating OSTDSs with a design capacity of 10,000 gallons per day or less.⁷ As a result, DOH regulates approximately 30 percent of the state's domestic wastewater from an estimated 2.6 million OSTDSs.⁸

Each year in Florida, nearly 100,000 OSTDSs are pumped out, generating approximately 100 million gallons of septage requiring treatment and disposal.⁹ Septage is the mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an OSTDS.¹⁰ It does not include the contents of portable toilets, holding tanks, or grease interceptors.¹¹ The treatment and disposal of septage is regulated by the EPA under 40 CFR Part 503. DOH administers the program through ch. 64E-6, F.A.C.

Approximately 40 percent of Florida's septage is treated at a DOH-permitted septage treatment facility and applied to a DOH-permitted land application site.¹² The remaining septage is treated at a DEP regulated WWTP or disposed of in a DEP regulated Class I landfill.¹³ Septage treated at a WWTP loses its identity as septage and becomes part of the facility's biosolids.¹⁴ Biosolids are regulated more

¹ "Domestic wastewater" is defined in r. 62-600.200(25), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; sewage.

² DEP's Domestic Wastewater Program, available at <http://www.dep.state.fl.us/water/wastewater/dom/index.htm>.

³ Sections 381.0065(1) and 403.021, F.S.

⁴ Section 381.0065(2)(k), F.S., defines an "OSTDS" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

⁵ Section 403.866, F.S., defines a "domestic wastewater treatment plant" as any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.

⁶ Sections 381.0065(2)(k) and (3), F.S.; chs. 62-600, and 62-701, F.A.C.

⁷ Sections 381.006(7) and 381.0065, F.S.; rule 62-600.120, F.A.C.; DEP's *Wastewater - Septic Systems*, available at <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm>.

⁸ DOH's *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html>.

⁹ DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.

¹⁰ Section 381.0065(2)(n), F.S.

¹¹ Rule 64E-6.002(48), F.A.C.

¹² Rule 64E-6.010(7), F.A.C.; DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf

¹³ DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at

http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.

¹⁴ DEP's analysis of HB 687 (2015), on file with the Agriculture & Natural Resources Subcommittee.

stringently than septage, with a variety of treatment, management and land application requirements governed by ch. 62-640, F.A.C.¹⁵

Septage received at a DOH permitted septage treatment facility is screened using bar screens having a maximum gap of ½ inch or rock screens or other similar mesh material having a maximum ¾ inch opening, and treated with lime to raise the pH to 12 for a minimum of two hours or to 12.5 for thirty minutes.¹⁶ Septage land application rates are limited by nitrogen content and, if applicable, phosphorous content.¹⁷

Land application is limited to:

- Sod farms;
- Pasture lands;
- Forests;
- Highway shoulders and medians;
- Plant nursery use;
- Land reclamation projects; and
- Soils used for growing human food chain crops.¹⁸

Pasture vegetation must not be cut for hay or silage or grazed for 30 days following septage application.¹⁹ No human food chain crops except hay, silage, or orchard crops may be harvested from the site for 60 days following septage application.²⁰ Vegetables and fruits that come into contact with the ground surface must not be grown on land used for septage application for 18 months after application.²¹

DOH prohibits septage from being land applied if the application is closer than:

- 3000 feet of any Class I water body or Outstanding Florida Water;
- 200 feet of any surface water bodies, except canals or bodies of water used for irrigation located completely within and not discharging from the site;
- 500 feet of any shallow public water supply well;
- 300 feet of any private drinking water supply well;
- 300 feet of any habitable building; or
- 75 feet of property lines and drainage ditches.²²

DOH requires the land application site to:

- Have a minimum of 24 inches of unsaturated soil above the ground water table at the time of septage application. If the wet season high ground water table is within two feet of the surface or is not determined in an Agricultural Use Plan, then the water table at the time of application must be determined using a monitoring well;²³
- Prohibit land application during rain events that are significant enough to cause runoff, or when the soil is saturated;²⁴
- Have sufficient buffer areas or stormwater management structures to retain the run-off from a 10-year one-hour storm;²⁵
- Have a topographic grade that does not exceed 8 percent;²⁶

¹⁵ DEP's analysis of HB 687 (2015), on file with the Agriculture & Natural Resources Subcommittee.

¹⁶ Rule 64E-6.010(7)(a), F.A.C.

¹⁷ Rule 64E-6.010(7)(q), F.A.C.

¹⁸ Rule 62E-6.010(7)(a)2., F.A.C.

¹⁹ Rule 62E-6.010(7)(a)2.a., F.A.C.

²⁰ Rule 62E-6.010(7)(a)2.b., F.A.C.

²¹ Rule 62E-6.010(7)(a)2.c., F.A.C.

²² Rule 62E-6.010(7)(j), F.A.C.

²³ Rule 62E-6.010(7)(k), F.A.C.

²⁴ Rule 64E-6.010(7)(l), F.A.C.

²⁵ *Id.*

- Have a layer of permeable soil at least two feet thick that covers the surface of the land application area;²⁷ and
- Be free from:²⁸
 - Subsurface fractures,
 - Solution cavities;
 - Sink holes;
 - Excavation core holes;
 - Abandoned holes; or
 - Other natural or manmade conduits which would allow contamination of ground water.²⁹

In 2010, the Legislature passed SB 550, which created a five-year OSTDS inspection program, which DOH was to fully implement by January 1, 2016, and banned the land application of septage by the same date.³⁰ It also required DOH, in consultation with DEP, to provide a report to the Governor and the Legislature, by February 1, 2011, recommending alternative methods for enhanced treatment of septage for land application, including a schedule for reducing land application, appropriate treatment levels, alternative disposal methods, enhanced permitting requirements, and costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods.³¹ In 2012, the Legislature passed HB 1263 repealing the OSTDS inspection program, but the January 1, 2016, prohibition on the land application of septage remained.³²

During Special Session 2015A, the prohibition on the land application of septage from OSTDSs was extended until June 30, 2016.³³

DOH's Report on Alternative Methods for the Treatment and Disposal of Septage

DOH's report, dated February 1, 2011, provided alternatives to the land application of septage, as follows.³⁴

- Treatment at WWTPs - Treating septage at WWTPs utilizes existing WWTPs and further centralizes wastewater treatment. However, the quantity of septage that can be treated is dependent upon the WWTPs processes and design capacity. Additionally, accepting septage at a WWTP has the potential to upset wastewater treatment processes resulting in increased operation and maintenance requirements and costs. Also, some WWTPs choose not to accept grease with septage, which necessitates the transport of grease for separate treatment and land application.
- Disposal at Class I landfills - Acceptance of septage at Class I landfills increases microbial activity resulting in increased waste decomposition and more rapid waste stabilization, requires less area than land application, and no additional land is required if septage is managed at an existing landfill. However, accepting septage can increase landfill instability (e.g., differential settlement and slope instability) and difficulty in operating equipment due to a wet slick medium.
- Increased treatment for land application - While possible, Florida's current law already meets the EPA's federal requirements.
- Enhancements to existing land application practices - Such as:
 - Requiring third-party oversight of septage treatment and land application activities, including:
 - Having Class C WWTP operators visit to oversee operations;

²⁶ Rule 64E-6.010(7)(m), F.A.C.

²⁷ Rule 64E-6.010(7)(p), F.A.C.

²⁸ This requirement applies to the land application site as well as the area 200 feet wide adjacent to, and exterior of, the site.

²⁹ Rule 64E-6.010(7)(n), F.A.C.

³⁰ Section 35, ch. 2010-205, Laws of Florida.

³¹ *Id.*

³² Section 32, ch. 2012-184, Laws of Florida.

³³ Section 50, ch. 2015-222, Laws of Florida.

³⁴ DOH's *Report on Alternative Methods for the Treatment and Disposal of Septage*, available at

http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/septage_alternatives.pdf.

- Increasing frequency of DOH inspections;
- Establishing regional DOH inspections; and
- Limiting application sites to use by one applicator.
- Changing operational procedures, including:
 - Metering receiving at treatment facilities;
 - Requiring larger stabilization and holding tanks at treatment facilities;
 - Requiring longer treatment exposure times and post-treatment holding times;
 - Requiring electronic pH meters to replace testing with paper strips;
 - Requiring sampling of stabilized septage;
 - Tracking yearly nutrient loading based on septage sampling; and
 - Requiring annual soil sampling of active application sites.³⁵
- Incineration, bioenergy production, and conversion to fertilizer. However, these alternatives have not yet captured a significant portion of the septage industry and would require large capital commitments from government or industry.³⁶

If the prohibition on the land application of septage were to become effective, DOH recommended the following:

- Legislation requiring local governments to make provisions for the treatment and disposal of septage generated within their geographic jurisdiction;
- Legislation requiring county comprehensive plans to include provisions for the treatment and disposal of septage if the plan includes areas already developed or to be developed using OSTDSs;
- Legislation requiring WWTPs to make provisions for receiving and treating septage if there are OSTDSs within their franchise area;
- Legislation that provides incentives for WWTPs and landfills to accept grease; and
- Legislation requiring local governments to provide for the disposal of grease.³⁷

DOH further recommended that, instead of discontinuing the land application of septage, land application practices be enhanced with increased third-party inspection and oversight along with enhanced nutrient and soil sampling.³⁸

DEP's Study of the Land Application of Septage

Legislation was introduced during the 2014 legislative session that, if passed, would have required DEP, in consultation with DOH and other entities, to examine and report on the potential options for the safe and appropriate disposal or reuse of septage.³⁹ While such legislation did not pass, DEP is currently conducting a study focusing on the leaching potential of land applied septage to ground water, with monitoring focused on ground water beneath and up-gradient from application sites.⁴⁰ Site history information, up-gradient monitoring and monitoring tracer analyses is expected to help differentiate between water quality impacts from the application, adjacent land use activities, and past and ongoing fertilizer applications at the sites.⁴¹ The study includes 12 sites, which are located mostly in spring areas.⁴² Each site has four wells, for a total of 48 wells being monitored.⁴³ Monitoring is expected to continue until late 2016, and DEP will produce a report on the results.⁴⁴

³⁵ *Id.* These enhancements could be accomplished within DOH's existing statutory rulemaking authority.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ HB 1113 and SB 1160 (2014); DEP's analysis of HB 687 (2015), on file with the Agriculture & Natural Resources Subcommittee.

⁴⁰ DEP's analysis of HB 687 (2015), on file with the Agriculture & Natural Resources Subcommittee.

⁴¹ *Id.*

⁴² *DEP's Legislative Update: Septage Land Application Site Monitoring* (December 23, 2015), on file with the Agriculture & Natural Resources Subcommittee.

⁴³ *Id.*

⁴⁴ *Id.*

Effect of Proposed Changes

The bill removes the June 30, 2016, prohibition on the land application of septage. Effective June 30, 2016, the bill repeals s. 51, ch. 2015-222, Laws of Florida, which is a conforming change made by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., removing the prohibition on the land application of septage.

Section 2. Repeals s. 51, ch. 2015-222, Laws of Florida.

Section 3. Provides effective dates.

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 bill may have a positive fiscal impact on the private sector because the bill deletes the prohibition on the land application of septage. Land application of septage from OSTDSs provides a method for disposal that is typically lower in cost than alternative methods (e.g. treatment at a WWTP or disposal at a Class I landfill).

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, 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 January 12, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment removed the provisions relating to Global RBCA and amended the title.

This analysis is drafted to the committee substitute as approved by the subcommittee.

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.0065, F.S., and
4 repealing s. 51, chapter 2015-222, Laws of Florida;
5 deleting the prohibition of the land application of
6 septage from onsite sewage treatment and disposal
7 systems and abrogating the scheduled reversion of
8 amendments to s. 381.0065(6), F.S.; providing
9 effective dates.

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

12
13 Section 1. Subsection (6) of section 381.0065, Florida
14 Statutes, is amended to read:

15 381.0065 Onsite sewage treatment and disposal systems;
16 regulation.—

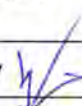

17 ~~(6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective June~~
18 ~~30, 2016, the land application of septage from onsite sewage~~
19 ~~treatment and disposal systems is prohibited.~~

20 Section 2. Effective June 30, 2016, section 51 of chapter
21 2015-222, Laws of Florida, is repealed.

22 Section 3. Except as otherwise expressly provided in this
23 act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB ANRS 16-02 Fish and Wildlife Conservation Commission
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Combee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Harrington
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Massengale	Massengale
2) State Affairs Committee		Gregory 	Camechis 

SUMMARY ANALYSIS

The bill relocates and amends provisions for recreational fish and wildlife violations for the Florida Fish and Wildlife Conservation Commission (FWC) to achieve consistency between the penalties and statutes, make the penalties meaningful, encourage compliance, and deter offenses. Specifically, the bill:

- Increases the fine for illegally taking game while trespassing from \$250 to \$500 per violation and adds all fish and wildlife to the list of species affected.
- Offers violators of recreational fishing and hunting licensing the new option of purchasing the respective license rather than paying the cost of the license in addition to the penalty, but not receiving the license.
- Increases the fine for repeat offenders for any noncriminal infraction within 3 years from \$100 to \$250.
- Reduces from a second degree misdemeanor violation to a noncriminal infraction the penalty for violations of rules or orders of the commission requiring reporting by people who hold alligator licenses or requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Decreases the penalty for failure to file required alligator reports from a second degree misdemeanor offense to a noncriminal infraction.
- Makes penalties for wildlife management areas on U.S. forests consistent with those of all other wildlife management areas.
- Increases the penalty for the sale, barter, or trade of tarpon from a second degree misdemeanor to a first degree misdemeanor to make it consistent with the penalty for rules that prohibit the sale of saltwater species.
- Deletes language prohibiting the altering or changing of a license or permit from the statutory section that prohibits the transfer of a license or permit or possession of a transferred license or permit. Instead, such actions will be treated as forging or counterfeiting a license or permit, punishable as a third degree felony.
- Authorizes spearfishing when allowed by FWC rule.
- Makes violations of rules or orders of the commission related to the unlawful use of *any* traps (unless otherwise provided) second degree misdemeanors.

In addition, the bill defines the term "fish and wildlife" to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.

It also authorizes, rather than requires, FWC to retain an administrative fee when collecting donations for Southeastern Guide Dogs, Inc.

The bill may have an insignificant positive fiscal impact on the FWC, an insignificant negative fiscal impact on the Clerks of Court, and an indeterminate fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution provides that the Florida Fish and Wildlife Conservation Commission (FWC) must exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.¹ However, the Florida Constitution specifically provides that all licensing fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission must be prescribed by general law.²

Section 379.401, F.S., provides a four-tiered penalty structure for violations of FWC's recreational hunting, fishing, and trapping regulations.

Level 1 Violations

Individuals who violate the following commit a Level 1 violation:

- FWC rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by FWC.
- FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by FWC.
- FWC rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by FWC.
- FWC rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., relating to recreational license requirements to hunt, fish, and trap.
- Section 379.3581, F.S., relating to hunter safety course requirements.
- Section 379.3003, F.S., relating to deer hunting clothing requirements.³

Section 379.401, F.S., provides the following penalties for Level 1 violations:

Level 1 Violation	Type of Infraction	Civil Penalty
1 st offense for failure to possess the required license or permit under s. 379.354, F.S. ⁴	Noncriminal	\$50 plus the cost of the license or permit
2 nd offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1 st offense ⁵	Noncriminal	\$100 plus the cost of the license or permit
1 st offense not involving s. 379.354, F.S., license or permit requirements ⁶	Noncriminal	\$50
2 nd offense not involving s. 379.354, F.S., license or permit ⁷ requirements within 36 months of 1 st offense	Noncriminal	\$100

¹ Section 9, Art. IV, Fla. Const.

² Id.

³ Section 379.401(1)(a), F.S.

⁴ Section 379.401(1)(c)1., F.S.

⁵ Section 379.401(1)(c)2., F.S.

⁶ Section 379.401(1)(d)1., F.S.

⁷ Section 379.401(1)(d)2., F.S.

Level 2 Violations

Individuals who violate the following commit a Level 2 violation:

- FWC rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- FWC rules or orders relating to the feeding of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- FWC rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- FWC rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- FWC rules or orders relating to the use of dogs for the taking of wildlife.
- FWC rules or orders prohibiting the unlawful use of finfish traps.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., relating to the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., relating to the obstruction of waterways with net gear.
- Section 379.413, F.S., relating to the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., relating to the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., relating to the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., relating to the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., relating to the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., relating to the intentional harassment of hunters, fishers, or trappers.
- Chapter 379, F.S., violations which are not otherwise classified.
- FWC rules or orders which are not otherwise classified.⁸

Section 379.401, F.S., provides the following penalties for Level 2 violations:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ⁹	2 nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2 nd offense within 3 years of previous Level 2 violation (or higher) ¹⁰	1 st Degree Misdemeanor	Min. \$250; Max. \$1000 or Max. 1 year	None
3 rd offense within 5 years of two previous Level 2 violations (or higher) ¹¹	1 st Degree Misdemeanor	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of license for 1 year
4 th offense within 10 years of three previous Level 2 violations (or higher) ¹²	1 st Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of license for 3 years

⁸ Section 379.401(2)(a), F.S.

⁹ Section 379.401(2)(b)1., F.S.

¹⁰ Section 379.401(2)(b)2., F.S.

¹¹ Section 379.401(2)(b)3., F.S.

¹² Section 379.401(2)(b)4., F.S.

Level 3 Violations

Individuals who violate the following commit a Level 3 violation:

- FWC rules or orders prohibiting the sale of saltwater fish.
- FWC rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(4), F.S., relating to the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., relating to the importation of freshwater fish.
- Section 379.354(17), F.S., relating to the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., relating to the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., relating to the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., relating to the possession and transportation of commercial quantities of freshwater game fish.¹³

Section 379.401, F.S., provides the following penalties for Level 3 violations:

Level 3 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ¹⁴	1 st Degree Misdemeanor	Max. \$1000 or Max. 1 year	None
2 nd offense within 10 years of previous Level 3 violation (or higher) ¹⁵	1 st Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Maximum suspension of license for 3 years
Fishing, hunting, or trapping with a suspended license ¹⁶	1 st Degree Misdemeanor	Mandatory \$1000 or Max. 1 year	May not acquire license for 5 years

Level 4 Violations

Individuals who violate the following commit a Level 4 violation:

- Section 379.365(2)(c), F.S., relating to criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., relating to criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., relating to the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., relating to the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., relating to the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., relating to the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., relating to the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., relating to the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.¹⁷

¹³ Section 379.401(3)(a), F.S.

¹⁴ Section 379.401(3)(b)1., F.S.

¹⁵ Section 379.401(3)(b)2., F.S.

¹⁶ Section 379.401(3)(b)3., F.S.

¹⁷ Section 379.401(4)(a), F.S.

Section 379.401, F.S., provides the following penalties for Level 4 violations:

Level 4 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ¹⁸	3 rd Degree Felony	Max. \$5000 or Max. 5 years	None

Miscellaneous Penalties

In addition to the current four-tier penalty structure, there are a number of statutes in ch. 379, F.S., that have their own penalties that apply to recreational activities and that do not fit into the four tiered structure. For example:

- Section 379.2223, F.S., provides that any person violating any rule or regulation relating to the control and management of state game lands commits a second degree misdemeanor;
- Section 379.2257, F.S., provides that any person violating any rule or regulation relating to control of wildlife within U.S. Forest Service lands commits a second degree misdemeanor;
- Section 379.29, F.S., provides that any person, firm, or corporation violating any provisions relating to contaminating fresh waters in quantities sufficient to injure, stupefy, or kill fish commits a second degree misdemeanor for the first offense, and for the second and subsequent offense, commits a first degree misdemeanor;
- Section 379.3511, F.S., provides that any person who willfully violates any provisions related to the regulation of subagents for the sale of hunting, fishing, and trapping licenses and permits commits a second degree misdemeanor;
- Section 379.411, F.S., provides that any person who is found guilty of killing or wounding any species designated as endangered, threatened, or of special concern, commits a third degree felony; and
- Section 379.4115, F.S., provides that any person convicted of unlawfully killing a Florida or wild panther commits a third degree felony.

Subsection 379.401(5), F.S., provides a “catch all” provision making violations of ch. 379, F.S., except as provided elsewhere in the chapter, second degree misdemeanors for first offenses, and first degree misdemeanors for second or subsequent offenses. Thus, the first offense carries a maximum civil penalty of \$500¹⁹ or maximum 60 days in jail.²⁰ The second or subsequent offense carries a maximum fine of \$1,000²¹ or maximum 1 year in jail.²² The statute does not provide an expiration time after which a first offense is not considered for purposes of accruing a second or subsequent offense. Similarly, subparagraph 379.401(2)(a)11, F.S., provides that all prohibitions in ch. 379, F.S., which are not otherwise classified, are Level 2 violations.

“Fish and Wildlife” Definition

Present Situation

Currently, ch. 379, F.S., does not contain a definition for the term “fish and wildlife.” The Florida Endangered and Threatened Species Act does define the phrase as it relates specifically to that section.²³ It defines “fish and wildlife” to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.²⁴

¹⁸ Section 379.401(4)(b), F.S.

¹⁹ Section 775.083(1)(e), F.S.

²⁰ Section 775.082(4)(b), F.S.

²¹ Section 775.083(1)(d), F.S.

²² Section 775.082(4)(a), F.S.

²³ Section 379.2291(3)(a), F.S.

²⁴ Id.

Effect of the Proposed Change

The bill amends s. 379.101, F.S., to add a definition for the term "fish and wildlife" that is identical to the definition in the Florida Endangered and Threatened Species Act.

Taking Game or Fur-Bearing Animals While Trespassing Penalties

Present Situation

In addition to other penalties in ch. 379, F.S., any person who violates the provisions of ch. 379, F.S., by illegally killing, taking, possessing, or selling game or fur-bearing animals in or out of season while trespassing or committing burglary must pay a \$250 fine plus court costs and restitution.²⁵

Effect of the Proposed Changes

The bill repeals s. 379.403, F.S., and creates a new subsection 379.401(5), F.S., to incorporate the additional trespassing and burglary penalty into the larger four tiered recreational penalty section. The bill increases the penalty from \$250 to \$500. Further, the bill expands the list of species affected to include fish and wildlife, rather than just fur-bearing animals.

Hunting or Fishing without a License

Present Situation

Individuals who wish to hunt or fish recreationally in Florida must obtain the appropriate license and permit, unless exempted by subsection 379.353(2), F.S.²⁶ Individuals who violate the hunting and fishing license and permit requirements in subsections 379.354(1) through (15), F.S., commit a Level 1 violation.²⁷ Persons convicted of this must pay a \$50 fine, plus the cost of the appropriate license and permit, for the first offense. Persons who commit a second offence within 36 months of the first offense must pay a \$100 fine, plus the cost of the appropriate license and permit.²⁸

From 2012 to 2014, FWC officers issued 9,435 citations for hunting or fishing without a license.²⁹

Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to offer violators of recreational fishing and hunting license provisions, except for a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), F.S.,³⁰ the option to purchase the appropriate license or permit in addition to the fine rather than just paying the cost of the license or permit. Thus, these individuals will possess the appropriate license and permit in the future. The bill also amends paragraph 379.401(1)(f), F.S., to provide a method to provide proof of compliance with the penalty.

The bill creates subsection 379.354(18), F.S., to provide a cross reference that, unless otherwise provided by law, violations of the hunting and fishing license and permit requirements are a Level 1 violation. This is consistent with subparagraph 379.401(1)(a)5., F.S.

²⁵ Section 379.403, F.S.

²⁶ Section 379.354, F.S.

²⁷ Section 379.401(1)(a)5., F.S.

²⁸ Section 379.401(1)(c)1. and 2., F.S.

²⁹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

³⁰ Section 379.354(6), F.S., pertains to pier licenses, s. 379.354(7), F.S., pertains to vessel licenses, and s. 379.354(8)(f) and (h), F.S., pertains to special use permits for limited entry permits and permits for recreational hunting on lands leased from FWC by nongovernmental owners.

Repeat Offense of a Level 1 Violation

Present Situation

Currently, individuals who commit a Level 1 violation within 36 months of a previous Level 1 violation must pay a \$100 fine.³¹

Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)2. and (d)2., F.S., to increase the penalty for a repeat Level 1 violation from \$100 to \$250.

Alligator License Hunting, Tagging, and Reporting Requirement Penalties

Present Situation

Individuals who wish to hunt alligators must obtain an alligator trapping license or alligator trapping agent's license.³² FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.³³ Once an alligator is killed, the trapper must attach a CITES tag 6 inches from tip of the alligator's tail.³⁴ All unused CITES tags must be returned to FWC within 14 days (for recreational licensees) or 15 days (for alligator management programs) after the expiration of the alligator harvest permit.³⁵ Failure to return a CITES tag may be grounds to deny future alligator harvest permits.³⁶

Further, within 24 hours of harvesting an alligator and prior to transfer of the carcass, the trapper must submit a harvest report form to FWC.³⁷ On the form, the trapper must indicate the CITES tag number, the harvest date, the location of the harvest, the size of the alligator, the disposition of the carcass, the sex, and the meat yield.³⁸ The alligator processor must fill out the same form upon receipt of the alligator carcass.³⁹ The processor must report its facility number, the disposition of the carcass, the sex of the alligator, and the meat yield.⁴⁰ The processor must maintain this information for one year.⁴¹

Other reporting requirements also apply to individuals who handle alligators. Hide dealers must keep records and make an annual report to FWC about the number of hides bought and who bought the hides.⁴² Individuals permitted to operate captive wildlife exhibits with alligators must complete and sign the Captive Alligator and Egg Transportation/Transfer Document before the transport of live untagged alligators.⁴³ Individuals who operate alligator farms must keep inventory records of alligators and

³¹ Section 379.401(1)(c)2. and (d)2., F.S.

³² Section 379.3751(1), F.S.

³³ Rule 68A-25.042(2)(d), F.A.C.; CITES is an international agreement between governments to regulate the trade of wild animal and plant species. Convention on International Trade in Endangered Species, *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (last visited October 7, 2015).

³⁴ Section 379.3752(1), F.S.; rule 68A-25.042(3)(h), F.A.C.

³⁵ Rules 68A-25.032(5) and 68A-25.042(3)(k), F.A.C.

³⁶ *Id.*

³⁷ Rules 68A-25.032(2)(g) and 68A-25.042(3)(i), F.A.C.

³⁸ FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at http://myfwc.com/media/310137/Alligator_1001at.pdf (last visited October 7, 2015).

³⁹ Rule 68A-25.042(5)(a)1., F.A.C.

⁴⁰ FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at http://myfwc.com/media/310137/Alligator_1001at.pdf (last visited October 7, 2015).

⁴¹ Rule 68A-25.042(5)(a)2., F.A.C.

⁴² Rule 68A-24.004(2)(a), F.A.C.

⁴³ Rule 68A-25.002(1)(b), F.A.C.

alligator eggs and document their transfer.⁴⁴ Individuals who collect alligator eggs and hatchlings must tag and report the collection.⁴⁵

It appears unclear whether failing to possess an alligator trapper license or alligator trapping agent's license, failing to comply with the tagging requirements, and failing to file a report relating to alligator licensees or alligator reporting requirements are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9., F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- A second degree misdemeanor under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 22 citations for violations of alligator trapping license requirement.⁴⁶ From 2012 to 2014, FWC officers did not issue any citations for violations of alligator tagging requirements.⁴⁷

Effect of Proposed Changes

The bill adds subparagraph 379.401(1)(a)5., F.S., to decrease the penalty for violating FWC rules or orders requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program from a Level 2 violation to a Level 1 violation. Violating rules or orders of the commission requiring the return of unused CITES tags issued under an alligator program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program will remain a Level 2 violation because the bill adds subparagraph 379.401(2)(a)12., F.S.

The bill amends subparagraph 379.401(1)(a)1., F.S., to decrease the penalty for violating rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who holds an any alligator trapping license or permit from a Level 2 violation to a Level 1 violation. Violating FWC rules or orders that require the maintenance of records relating to alligators will be a Level 2 violation because the bill adds subparagraph 379.401(2)(a)11., F.S.

Lastly, the bill creates subparagraphs 379.401(2)(a)29. and 30., F.S., and subsections 379.3751(5), and 379.3752(3), F.S., to provide cross references that violations of the requirements to possess an alligator trapping license (or alligator trapping agent's license) or to place a CITES tag on a harvested alligator are Level 2 violations.

Wildlife Management Areas on U.S. Forest Service Land

Present Situation

Section 379.2257, F.S., authorizes FWC to enter into cooperative agreements with the U.S. Forest Service (USFS) for the development of game, bird, fish, reptile, or fur-bearing animal management and demonstration projects in the National Forests in Florida.⁴⁸ With the cooperation of the USFS, FWC may make, adopt, promulgate, amend, and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the National Forests.⁴⁹ These

⁴⁴ Rule 68A-25.004(3), F.A.C.

⁴⁵ Rule 68A-25.031(1)(b) and (2)(b), F.A.C.

⁴⁶ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 20 (October 23, 2015).

⁴⁷ Id.

⁴⁸ Section 379.2257(1), F.S.

⁴⁹ Section 379.2257(2), F.S.

regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.⁵⁰

Individuals who violate these rules commit a second degree misdemeanor.⁵¹ Violators face a maximum civil penalty of \$500 or a maximum 60 days in jail.⁵² These penalties are inconsistent with violations in other wildlife management areas. For example, violations of FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission are Level 1 violations.⁵³ Whereas, violations of FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission are a Level 2 violation.⁵⁴

Effect of Proposed Changes

The bill amends s. 379.2257, F.S., to indicate that penalties for violations of rules or regulations for wildlife management areas on USFS lands will be penalized under s. 379.401, F.S. Thus, the penalties for these areas will be consistent for all lands. This change will increase the penalty for repeat offenders of wildlife management area, wildlife and environmental area, and fish management area rules on USFS lands. According to FWC, USFS indicated it preferred to eliminate the inconsistency.⁵⁵

Sale, Barter, or Trade of Tarpon Penalties

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.⁵⁶ Previously individuals could harvest two tarpon per day.⁵⁷ The rule amendments restricted tarpon to a catch-and-release only fishery.⁵⁸ FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.⁵⁹

Section 379.357, F.S., provides that individuals may only harvest tarpon when in pursuit of an International Game Fish Association record.⁶⁰ 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.⁶¹ A person may not use more than one tarpon tag during a single license year.⁶²

Individual may not take, kill, or possess any tarpon unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.⁶³ Individuals who violate this prohibition commit a Level 2 violation.⁶⁴ Further, individuals may not sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase, or purchase any

⁵⁰ See chapters 68A-15 and 68A-17, F.A.C.

⁵¹ Section 379.2257(3), F.S.

⁵² Sections 775.082 and 775.083, F.S.

⁵³ Section 379.401(1)(a)2., F.S.

⁵⁴ Section 379.401(2)(a)3., F.S.

⁵⁵ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 9 (October 23, 2015).

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

⁵⁷ Rule 68B-32.004, F.A.C. (2005).

⁵⁸ Rule 68B-32.001, F.A.C.

⁵⁹ Rule 68B-32.004(2), F.A.C.

⁶⁰ Rule 68B-32.009(1)(a), F.A.C.

⁶¹ Rule 68B-32.009(1)(b), F.A.C.

⁶² Rule 68B-32.009(1)(c), F.A.C.

⁶³ Section 379.357(3), F.S.

⁶⁴ Section 379.357(4), F.S.

tarpon.⁶⁵ Violations of any FWC rules or orders prohibiting the sale of saltwater fish, including tarpon, are Level 3 violations.⁶⁶

From 2012 to 2014, FWC officers issued two citations for violations of tarpon regulations.⁶⁷

Effect of Proposed Changes

The bill amends subsection 379.357(5), F.S., and adds subparagraph 379.401(3)(a)6., F.S., to increase the penalty for the sale, transfer, or purchase of tarpon from a Level 2 violation to a Level 3 violation. This will make the penalty consistent with the penalty for violations prohibiting the sale of all saltwater fish.

The bill amends subsection 379.357(4), F.S., and creates subparagraph 379.401(2)(a)23, F.S., so that the unauthorized take, kill, or possession of tarpon remains a Level 2 violation.

“Changing” or “Altering” a License Penalties

Present Situation

Individuals may not “alter” or “change” in any manner, or loan or transfer to another, unless otherwise provided, any license or permit issued by FWC.⁶⁸ It is unclear whether violators of this provision are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

Whereas, individuals who make, forge, counterfeit, or reproduce a license or permit issued by FWC or knowingly possess such a license commit a Level 4 violation.⁶⁹ Level 4 violations are third degree felonies which are consistent with the penalty for counterfeiting and forgery in the criminal statutes.⁷⁰

From 2012 to 2014, FWC officers did not issue any citations altering or changing a license or permit.⁷¹

Effect of Proposed Changes

The bill amends s. 379.3502, F.S., to remove the reference to “altering” or “changing” a license because “altering” or “changing” a license may be charged as forging or counterfeiting a license.

The bill also clarifies that loaning, transferring, or using a borrowed or transferred license or permit without permission is a Level 2 violation by amending s. 379.3502, F.S., and adding subparagraph 379.401(2)(a)20, F.S.

⁶⁵ Section 379.357(5), F.S.

⁶⁶ Section 379.401(3)(a)1., F.S.

⁶⁷ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

⁶⁸ Section 379.3502, F.S.

⁶⁹ Sections 379.354(16) and 379.401(4)(a)5., F.S.

⁷⁰ Sections 831.01 and 831.02, F.S.

⁷¹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 11 (October 23, 2015).

Sale, Purchase, Harvest, or Attempted Harvest of any Saltwater Product Penalties & Stone Crab and Spiny Lobster Trap Tags Penalties

Present Situation

Individuals or corporations who wish to commercially sell, purchase, or harvest saltwater products must obtain the appropriate license.⁷² Individuals must obtain a stone trap tag to use a stone crab trap.⁷³ Further, individuals must obtain a spiny lobster certificate and trap tag to use a spiny lobster trap.⁷⁴ Violators of these regulations commit a Level 2 violation.⁷⁵ However, such violations are commercial activities that are punishable under s. 379.407, F.S.

Further, individuals who steal stone crab and spiny lobster trap contents and gear commit Level 2 violations.⁷⁶

Effect of Proposed Changes

The bill removes subparagraphs 379.365(2)(a)2. and 379.401(2)(a)13., F.S., and amends subparagraphs 379.401(2)(a)16. and 18., F.S., to remove these commercial violations from the recreation penalty statute. Thus, violations of the requirements to obtain a saltwater products license, stone crab trap tags, and spiny lobster certificate and trap tags will now be punishable under the commercial fishing penalty statute, s. 379.407, F.S.

Theft of stone crab and spiny lobster trap contents and gear will remain Level 2 violations under the new subparagraphs 379.401(2)(a)26. and 28., F.S.

Authorized Spearfishing

Present Situation

Subsection 379.2425(2), F.S., prohibits spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys. However, rule 68B-20.003, F.A.C., allows spearfishing in these areas if authorized in other marine fisheries rules.⁷⁷

In addition, it appears unclear whether violating spearfishing regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 38 citations for spearfishing where prohibited.⁷⁸

⁷² Section 379.361, F.S.

⁷³ Section 379.365(2)(a), F.S.

⁷⁴ Section 379.3671(2)(c), F.S.

⁷⁵ Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

⁷⁶ Sections 379.401(2)(a)16. and 18., F.S.

⁷⁷ See rules 68B-20.003 and 68B-20.004, F.A.C.

⁷⁸ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 10 (October 23, 2015).

Effect of Proposed Changes

The bill amends subsection 379.2425(2), F.S., to allow spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys when authorized by rule.

The bill also creates subsection 379.2425(4), F.S., and subparagraph 379.401(2)(a)16., F.S., to make violations of the spearfishing regulations a Level 2 violation.

Unlawful Use of Traps Penalties

Present Situation

FWC sets forth numerous regulations on the use of traps.⁷⁹ Individuals who violate FWC rules or orders prohibiting unlawful use of finfish traps commit a Level 2 violation. However, the statute does not indicate the penalty for the unlawful use of other traps. Thus, it appears unclear whether violating the trap regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

Effect of Proposed Changes

The bill amends subparagraph 379.401(2)(a)10., F.S., to make violations of all trap regulations a Level 2 violation.

Enforcement of Commission Rules

Present Situation

Section 379.33, F.S., states, “[e]xcept as provided under s. 379.401, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” Section 379.401, F.S., contains most of the recreational fishing and hunting penalties while s. 379.407, F.S., contains the penalties for commercial saltwater fishing regulations. However, other penalties enforced by FWC are found in other statutes.⁸⁰ Thus, the statement in s. 379.33, F.S., is inaccurate and confusing.

Effect of Proposed Changes

The bill amends s. 379.33, F.S., to remove the inaccurate statement.

Control and Management of State Game Lands Penalties

Present Situation

The Legislature authorized FWC to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or

⁷⁹ See e.g., rule 68A-24.002, F.A.C. (relating to fur bearing animals); rule 68A-23.002, F.A.C. (relating to taking freshwater fish); and rule 68A-9.010 (relating to taking nuisance animals).

⁸⁰ See ch. 372, F.S., and s. 379.4015, F.S.

development of lands or waters owned by, leased by, or otherwise assigned to, FWC for fish or wildlife management purposes.⁸¹

State game lands include Wildlife Management Areas (WMAs), Wildlife and Environmental Areas (WEAs), and Fish Management Areas (FMAs). FWC manages a WMA system in order to sustain the widest possible range of native wildlife in their natural habitats. These lands are more rugged than parks, with fewer developed amenities. The WMA system includes more than 5.8 million acres of land established as WMAs or WEAs.⁸²

Chapter 68A-15, F.A.C., establishes the rules for Florida's WMAs, and ch. 68A-17, F.A.C., establishes the rules for Florida's WEAs. These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.

Individuals who violate these rules commit a second degree misdemeanor,⁸³ punishable by a maximum civil penalty of \$500⁸⁴ or a maximum 60 days in jail.⁸⁵

Effect of Proposed Changes

The bill amends subsection 379.2223(2), F.S., to make violations of WMA and FMA rules subject to the penalties in the recreational penalties statute. Thus, the penalties in subparagraphs 379.401(1)(a)2., 379.401(1)(a)3., and 379.401(2)(a)3., F.S., will apply to violations of WMA and FMA rules.

Contamination of Freshwater Penalties

Present Situation

Individual, firms, and corporations may not cause any dyestuff, coal tar, oil, sawdust, poison, or deleterious substances to be thrown, run, or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish.⁸⁶ Violators of this prohibition commit a second degree misdemeanor for first offense, and first degree misdemeanor for the second or subsequent offense.⁸⁷ Thus, the first offense carries a maximum civil penalty of \$500⁸⁸ or maximum 60 days in jail.⁸⁹ The second or subsequent offense carries a maximum fine of \$1,000⁹⁰ or maximum 1 year in jail.⁹¹

Effect of Proposed Changes

The bill amends subsection 379.29(2), F.S., and adds subparagraph 379.401(2)(a)17., F.S., to make contaminating fresh water in a way that injures fish a Level 2 violation.

⁸¹ Section 379.2223(1), F.S.

⁸² FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 8 (October 23, 2015).

⁸³ Section 379.2223(2), F.S.

⁸⁴ Section 775.083(1)(e), F.S.

⁸⁵ Section 775.082(4)(b), F.S.

⁸⁶ Section 379.29(1), F.S.

⁸⁷ Section 379.29(2), F.S.

⁸⁸ Section 775.083(1)(e), F.S.

⁸⁹ Section 775.082(4)(b), F.S.

⁹⁰ Section 775.083(1)(d), F.S.

⁹¹ Section 775.082(4)(a), F.S.

Use of Explosives or Other Substances Penalties

Present Situation

Individuals may not use explosives or other similar substances in freshwaters of the state to injure fish.⁹² It appears unclear whether violating this provision is a:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

Effect of Proposed Change

The bill amends s. 379.295, F.S., and creates subparagraph 379.401(2)(a)18., F.S., to make violations of the use of explosives prohibition a Level 2 violation.

Freshwater Fish Dealer's and Fur and Hide Dealer's License Penalties

Present Situation

An individual who wishes to engage in the business of taking for sale or selling any frogs or freshwater fish, including live bait, of any species or size, or importing any exotic or nonnative fish must obtain a freshwater fish dealer's license.⁹³ Further, individuals who wish to engage in the business of a dealer or buyer in green or dried alligator hides or green or dried furs or purchase such hides or furs must obtain a fur and hide dealer's license.

It appears unclear whether violating of these license requirements are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 51 citations for violations of the freshwater fish dealer's license requirements.⁹⁴ From 2012 to 2014, FWC officers did not issue any citations for violations of the fur and hide dealer's license requirements.⁹⁵

Effect of Proposed Changes

The bill amends ss. 379.363 and 379.364, F.S., and creates subparagraphs 379.401(1)(a)24. and 379.401(2)(a)25., F.S., to make violations of the freshwater fish dealer's and fur and hide dealer's license requirements a Level 2 violation.

False Statement on License, Permit, or Application Penalties

Present Situation

Individuals who swear or affirm to a false statement on an application for a license or permit violates ch. 379, F.S.⁹⁶ Such statement also make the license or permit void.⁹⁷

⁹² Section 379.295, F.S.

⁹³ Section 379.363(1), F.S.

⁹⁴ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 18 (October 23, 2015).

⁹⁵ *Id.* at 19.

⁹⁶ Section 379.3503, F.S.

⁹⁷ *Id.*

Likewise, individuals who knowingly and willfully enter false information on, or allow or cause false information to be entered on or shown upon any license or permit in order to avoid prosecution or to assist another to avoid prosecution, or for any other wrongful purpose must be punished under s. 379.401, F.S.⁹⁸

It is unclear whether violations of these provisions are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued three citations for making false statements on an application for a license or permit.⁹⁹ From 2012 to 2014, FWC officers issued two citations for entering false information on, or allowing or causing false information to be entered on or shown upon any license or permit.¹⁰⁰

Effect of Proposed Changes

The bill amends ss. 379.3503 and 379.3504, F.S., and creates subparagraphs 379.401(2)(a)20. and 21., F.S., to make false statements in an application for a license or permit or entering false information on licenses or permits Level 2 violations.

License Subagent Penalties

Present Situation

The Legislature authorized FWC to appoint subagents to act on the behalf of FWC to sell hunting, fishing, and trapping licenses and permits.¹⁰¹ FWC may prohibit subagents from selling certain types of licenses and permits.¹⁰² Further, only individuals appointed by FWC may handle licenses or permits for a fee or compensation of any kind.¹⁰³

As of July 2015, FWC has contracted with 883 bonded subagents to sell hunting, fishing, and trapping licenses and permits.¹⁰⁴ The subagents include 215 Florida tax collectors offices, as well retail stores, sporting goods stores, hardware stores, bait and tackle establishments, and others.¹⁰⁵

Individuals who violate the subagent regulations and rules commit a second degree misdemeanor.¹⁰⁶ Thus, violators face a maximum civil penalty of \$500¹⁰⁷ or a maximum 60 days in jail.¹⁰⁸

From 2012 to 2014, FWC officers did not issue any citations for violations of the subagent licensing requirements.¹⁰⁹

⁹⁸ Section 379.3504, F.S.

⁹⁹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 12 (October 23, 2015).

¹⁰⁰ Id.

¹⁰¹ Section 379.3511, F.S.

¹⁰² Section 379.3511(1)(b), F.S.

¹⁰³ Section 379.3511(1)(c), F.S.

¹⁰⁴ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

¹⁰⁵ Id.

¹⁰⁶ Section 379.3511(1)(d), F.S.

¹⁰⁷ Section 775.083(1)(e), F.S.

¹⁰⁸ Section 775.082(4)(b), F.S.

¹⁰⁹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

Effect of Proposed Change

The bill repeals paragraph 379.3511(1)(d), F.S., creates subsection 379.3511(4), F.S., and adds subparagraph 379.401(2)(a)22., F.S., to make violations of the subagent regulations and rules a Level 2 violation.

Illegal Killing, Possessing, or Capturing of Alligators or Other Crocodilia or Eggs Penalties

Present Situation

Individuals may not intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the FWC. Subsection 379.409(1), F.S., makes a violation of this prohibition a third degree felony. Subparagraph 379.401(4)(a), F.S., makes a violation of this provision a Level 4 violation. Both carry a maximum fine of \$5,000¹¹⁰ or a maximum jail time of 5 years for the first offense.¹¹¹ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹¹²

From 2012 to 2014, FWC officers issued 32 citations for intentionally killing, injuring, possessing, or capturing, or attempting to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian.¹¹³

Effect of Proposed Changes

The bill amends subsection 379.409(1), F.S., and creates subsection 379.409(4), F.S., to clarify that violations of this prohibition are a Level 4 violation.

Intentional Killing or Wounding Species Designated as Endangered, Threatened, or of Special Concern Penalties

Present Situation

Individuals may not intentionally kill or wound any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife without authorization from FWC.¹¹⁴ Violators of this prohibition face a third degree felony.¹¹⁵ Third degree felonies carry a maximum fine of \$5,000¹¹⁶ or a maximum jail time of 5 years.¹¹⁷ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹¹⁸

From 2012 to 2014, FWC officers issued 12 citations for intentionally killing or wounding any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or intentionally destroying the eggs or nest of any such fish or wildlife.¹¹⁹

¹¹⁰ Section 775.083, F.S.

¹¹¹ Section 775.082, F.S.

¹¹² Section 379.409(1), F.S.

¹¹³ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

¹¹⁴ Section 379.411, F.S.

¹¹⁵ Id.

¹¹⁶ Section 775.083, F.S.

¹¹⁷ Section 775.082, F.S.

¹¹⁸ Section 379.411, F.S.

¹¹⁹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

Effect of Proposed Change

The bill amends s. 379.411, F.S., and creates subparagraph 379.401(4)(a)9., F.S., to make violations of this prohibition a Level 4 violation.

Killing Florida or Wild Panther Penalties

Present Situation

Individuals may not kill any Florida panther or wild panther.¹²⁰ Violators of this prohibition face a third degree felony.¹²¹ Third degree felonies carry a maximum fine of \$5,000¹²² or a maximum jail time of 5 years for the first offense.¹²³ These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.¹²⁴

From 2012 to 2014, FWC officers did not issue any citations for killing any Florida panther or wild panther.¹²⁵

Effect of Proposed Changes

The bill amends s. 379.4115, F.S., and creates subparagraph 379.401(4)(a)10., F.S., to make violations of this prohibition a Level 4 violation.

Repeat Offense of a Level 4 Violation

Present Situation

Currently, an individual who commits a Level 4 violation commits a third degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹²⁶ Thus, such individual is subject to a maximum fine of \$5000¹²⁷ or a maximum jail term of 5 years.¹²⁸ Section 379.401, F.S., does not provide for increased penalties for repeat offenders. However, specific sections provide for enhanced penalties for Level Four violations if the individual is a habitual felony offender or a habitual violent felony offender.¹²⁹

A "habitual felony offender" is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;
- The felony for which the defendant is to be sentenced was committed:
 - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
 - Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-

¹²⁰ Section 379.4115, F.S.

¹²¹ Id.

¹²² Section 775.083, F.S.

¹²³ Section 775.082, F.S.

¹²⁴ Section 379.4115(3), F.S.

¹²⁵ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

¹²⁶ Section 379.401(4)(b), F.S.

¹²⁷ Section 775.083, F.S.

¹²⁸ Section 775.082, F.S.

¹²⁹ See s. 379.409(1), F.S. (illegal killing, possessing, or capturing of alligators or other crocodylian or eggs), s. 379.411, F.S. (intentional killing or wounding species designated as endangered, threatened, or of special concern), and s. 379.4115(3), F.S. (killing Florida or wild panther).

ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation relating to the purchase or the possession of a controlled substance;
- The defendant has not received a pardon for any felony or other qualified offense used in the habitual felony offender determination; and
- A conviction of a felony or other qualified offense used in the habitual felony determination has not been set aside in any post-conviction proceeding.¹³⁰

A habitual felony offender may face a penalty not to exceed 10 years in prison.¹³¹

A “habitual violent felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aggravated assault with a deadly weapon;
 - Murder;
 - Manslaughter;
 - Aggravated manslaughter of an elderly person or disabled adult;
 - Aggravated manslaughter of a child;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary;
 - Aggravated battery; or
 - Aggravated stalking;
- The felony for which the defendant is to be sentenced was committed:
 - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
 - Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
- The defendant has not received a pardon on the ground of innocence for any crime used in the habitual violent felony offender determination; and
- A conviction of a crime used in the habitual violent felony offender determination has not been set aside in any post-conviction proceeding.¹³²

A habitual violent felony offender may face a penalty not to exceed 10 years in prison and may not be eligible for release for 5 years.¹³³

¹³⁰ Section 775.084(1)(a), F.S.

¹³¹ Section 77.084(4)(a)3., F.S.

¹³² Section 775.084(1)(b), F.S.

¹³³ Section 775.084(4)(b)3., F.S.

Effect of the Proposed Changes

The bill amends paragraph 379.401(4)(b), F.S., to authorize penalties for all Level 4 violations to increase if the court determines the individual is a habitual felony offender or a habitual violent felony offender. This is consistent with the current penalties for:

- Illegally killing, possessing, or capturing of alligators or other crocodilia or eggs;¹³⁴
- Intentionally killing or wounding species designated as endangered, threatened, or of special concern;¹³⁵ and
- Killing Florida or wild panther.¹³⁶

Catch All Chapter Violation Penalties

Present Situation

Subparagraph 379.401(2)(a)11., F.S., makes violations of ch. 379, F.S., Level 2 violations. Whereas, subsection 379.401(5), F.S., makes violations of ch. 379, F.S., a second degree misdemeanor for the first offense and a first degree misdemeanor for the second and subsequent offenses.

Effect of the Proposed Changes

The bill removes subsection 379.401(5), F.S., to eliminate this inconsistency. Thus, the catch all penalty for violations of ch. 379, F.S., will be a Level 2 violation under subparagraph 379.401(2)(a)13., F.S.

Southeastern Guide Dogs, Inc.

Present Situation

Individuals purchasing a license or permit from FWC may voluntarily check a box on their application to authorize an additional \$2 fee.¹³⁷ FWC must retain \$0.90 to cover administrative costs.¹³⁸ Southeastern Guide Dogs, Inc., must use the money they receive to breed, raise, and train guide dogs for the blind, specifically for the "Paws for Patriots" program, which includes in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.¹³⁹

Southeastern Guide Dogs, Inc., a 501(c)(3) nonprofit organization, formed in 1982. The organization places more than 100 trained dogs each year into careers benefitting people with visual impairments and veterans. The organization provides all services free of charge and receives no government funding. The Paws for Patriots Program matches guide dogs, service dogs, facility therapy dogs, and emotional support dogs with active duty soldiers and retired servicemen and women who have one of the needs these dogs can help meet.¹⁴⁰

When s. 379.359, F.S., passed, FWC contracted with a third-party vendor to operate a system that issues recreational licenses. As part of that contract, the vendor charged FWC \$0.90 to process each individual voluntary contribution made to Southeastern Guide Dogs, Inc. In practice, FWC retained \$0.90 of each contribution made to cover this processing fee, and forwarded \$1.10 to Southeastern Guide Dogs, Inc.¹⁴¹

¹³⁴ Section 379.409(1), F.S.

¹³⁵ Section 379.411, F.S.

¹³⁶ Section 379.4115(3), F.S.

¹³⁷ Section 379.359, F.S.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Southeastern Guide Dogs, *About Us*, <http://www.guidedogs.org/about/about-us/> (last visited October 8, 2015).

¹⁴¹ FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

In October 2012, FWC contracted with a new company to process recreational licenses. Under the new contract, the new vendor does not charge FWC any fees to process the contributions to Southeastern Guide Dogs, Inc. Thus, FWC stopped retaining any fees from the contributions and began sending the entirety of each contribution (\$2.00) to Southeastern Guide Dogs, Inc.¹⁴²

In 2015, the Department of Financial Services (DFS) contacted FWC staff and advised that because the statutes says that \$0.90 “shall” be retained from each voluntary contribution made under s. 379.359, F.S., FWC was not permitted to send the entirety of the contributions to Southeastern Guide Dogs, Inc. DFS temporarily authorized the agency to continue sending the entire contributions to Southeastern Guide Dogs, Inc., with an agreement that FWC will seek a legislative change that would eliminate the requirement that FWC retain the \$0.90 fee.¹⁴³

Effect of Proposed Changes

The bill amends s. 379.359, F.S., to eliminate the requirement that FWC retain the administrative fee. Instead, FWC may retain the fee at its discretion.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 379.101, F.S., defining the term “fish and wildlife.”
- Section 2.** Amends s. 379.2223, F.S., relating to control and management of state game lands.
- Section 3.** Amends s. 379.2257, F.S., relating to penalties on U.S. Forest Service lands.
- Section 4.** Amends s. 379.2425, F.S., relating to spearfishing.
- Section 5.** Amends s. 379.29, F.S., relating to contaminating fresh water.
- Section 6.** Amends s. 379.295, F.S., relating to use of explosives and other substances.
- Section 7.** Amends s. 379.33, F.S., relating to enforcement of commission rules.
- Section 8.** Amends s. 379.3502, F.S., relating to prohibition on the transferring licenses and permits.
- Section 9.** Amends s. 379.3503, F.S., relating to false statements in application for licenses or permits.
- Section 10.** Amends s. 379.3504, F.S., relating to entering false information on licenses or permits.
- Section 11.** Amends s. 379.3511, F.S., relating to appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.
- Section 12.** Amends s. 379.354, F.S., relating to recreational licenses, permits, and authorization numbers.
- Section 13.** Amends s. 379.357, F.S., relating to FWC license program for tarpon.
- Section 14.** Amends s. 379.359, F.S., relating to license application provision for voluntary contribution to Southeastern Guide Dogs, Inc.
- Section 15.** Amends s. 379.363, F.S., relating to freshwater fish dealer’s license.

¹⁴² Id.

¹⁴³ FWC, 2016 Legislative Proposal, *Southeastern Guide Dogs, Inc. Donation Fee*, p. 2 (October 5, 2015).

- Section 16.** Amends s. 379.364, F.S., relating to license required for fur and hide dealers.
- Section 17.** Amends s. 379.365, F.S., relating to stone crab regulations.
- Section 18.** Amends s. 379.3751, F.S., relating to taking and possession of alligators.
- Section 19.** Amends s. 379.3752, F.S., relating to required tagging of alligators and hides.
- Section 20.** Amends s. 379.401, F.S., relating to penalties for Level One, Level Two, Level Three, and Level Four violations; providing additional criminal penalties for Level Four violations; providing additional penalties for the illegal taking of fish and wildlife while trespassing.
- Section 21.** Repeals s. 379.403, F.S., relating to illegal killing, taking, possessing, or selling wildlife or game.
- Section 22.** Amends s. 379.409, F.S., relating to illegal killing, possessing, or capturing of alligators or other crocodilia or eggs.
- Section 23.** Amends s. 379.411, F.S., relating to intentionally killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 24.** Amends s. 379.4115, F.S., relating to prohibition of killing Florida or wild panther.
- Section 25.** Amends s. 379.3004, F.S., correcting a cross reference.
- Section 26.** Amends s. 379.337, F.S., correcting a cross reference.
- Section 27.** Amends s. 589.19, F.S., correcting a cross reference.
- Section 28.** Amends s. 810.09, F.S., correcting a cross reference.
- Section 29.** Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant positive fiscal impact on FWC because it provides violators who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license. Currently, the Clerks of Courts collect these fines.¹⁴⁴ Now the money will be deposited in the Dedicated License Trust Fund,¹⁴⁵ the Lifetime Fish and Wildlife Trust Fund,¹⁴⁶ the State Game Trust Fund,¹⁴⁷ or the Marine Resources Conservation Trust Fund¹⁴⁸ if the individual chooses to purchase the appropriate license and permit. Based on FWC's estimation, if every violator chooses to purchase a license, the bill would increase funds collected by FWC by \$50,806.¹⁴⁹

¹⁴⁴ Sections 142.01(1)(a) and 379.2203(1), F.S.

¹⁴⁵ Section 379.203, F.S.

¹⁴⁶ Section 379.207, F.S.

¹⁴⁷ Section 379.211, F.S.

¹⁴⁸ Section 379.2201, F.S.

¹⁴⁹ FWC, *Recreational Penalties Fiscal Impact*, p. 3 (October 23, 2015).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an insignificant negative fiscal impact on the Clerks of Court. The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license, thereby reducing the fines that may be collected by the Clerks of Courts.¹⁵⁰ However, the bill also increases the penalties collected by the Clerks of Court for certain violations. Based on FWC's estimation, if every judge imposes the maximum penalty and every violator chooses to purchase a license, the bill would reduce funds deposited with the Clerks of Court by approximately \$85,456.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the individuals who violate the provisions of ch. 379, F.S. Depending on the specific violation, the bill may increase or decrease the penalty.

In addition, the bill may create a positive impact on Southern Guide Dogs, Inc., by amending s. 379.359, F.S., to authorize FWC to transfer all of the \$2 contribution to the non-profit rather than requiring FWC to retain \$.90 for administrative costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license, thereby reducing the fines that may be collected by the Clerks of Courts. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

¹⁵⁰ Sections 142.01(1)(a) and 379.2203(1), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with committee substitute. The amendment authorizes enhanced penalties for Level 4 violations if the individual is a habitual felony offender or a habitual violent felony offender.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

27 F.S.; revising penalties for violations of swearing or
28 affirming to a false statement on a license or permit
29 application; amending s. 379.3504, F.S.; revising
30 penalties for violations relating to entering false
31 information on a license or permit; amending s.
32 379.3511, F.S.; revising penalties relating to the
33 sale of specified licenses and permits by appointed
34 subagents; amending s. 379.354, F.S.; providing a
35 penalty for violations relating to possession of
36 recreational hunting, fishing, and trapping licenses,
37 permits, and authorization numbers; amending s.
38 379.357, F.S.; revising penalties for violations
39 relating to the purchase of a tarpon tag and the sale
40 of tarpon; amending s. 379.359, F.S.; authorizing,
41 rather than requiring, the commission to retain a
42 portion of voluntary contributions to Southeastern
43 Guide Dogs, Inc.; amending s. 379.363, F.S.; providing
44 a penalty for violations relating to freshwater fish
45 dealers' licenses; amending s. 379.364, F.S.;
46 providing a penalty for violations relating to fur and
47 hide dealers' licenses; amending s. 379.365, F.S.;
48 deleting penalty provisions for violations of stone
49 crab regulations by persons other than commercial
50 harvesters; amending s. 379.3751, F.S.; providing a
51 penalty for violations relating to trapping licenses
52 for taking and possessing alligators; amending s.

53 379.3752, F.S.; providing a penalty for violations
 54 relating to the tagging of alligators and hides;
 55 amending s. 379.401, F.S.; providing penalties for
 56 violations relating to filing reports and documents by
 57 persons who hold alligator licenses and permits;
 58 reducing the penalties for failure to return CITES
 59 tags issued under the Statewide Alligator Harvest
 60 Program and the Stateside Nuisance Alligator Program;
 61 providing an alternative penalty for specified
 62 violations relating to recreational fishing, hunting,
 63 and trapping licenses; increasing the civil penalty
 64 amount for Level One repeat violations; providing that
 65 the unlawful use of any trap is a Level Two violation;
 66 providing that violations relating to record
 67 requirements for alligators is a Level Two violation;
 68 providing that violations relating to the return of
 69 CITES tags issued in a program other than the
 70 Statewide Alligator Harvest Program or the Statewide
 71 Nuisance Alligator Program is a Level Two violation;
 72 deleting penalty provisions for the sale, purchase,
 73 harvest, or attempted harvest of any saltwater product
 74 with intent to sell; providing additional criminal
 75 penalties for Level Four violations; providing
 76 additional penalties for the illegal taking of fish
 77 and wildlife while trespassing; repealing s. 379.403,
 78 F.S., relating to the illegal killing, taking,

79 possessing, or selling of wildlife or game; amending
 80 s. 379.409, F.S.; revising penalties for the illegal
 81 killing, possessing, or capturing of alligators or
 82 other crocodilia or their eggs; amending s. 379.411,
 83 F.S.; revising penalties for the intentional killing
 84 or wounding of any species designated as endangered,
 85 threatened, or of special concern; amending s.
 86 379.4115, F.S.; revising penalties for violations
 87 relating to killing a Florida or wild panther;
 88 amending ss. 379.3004, 379.337, 589.19, and 810.09,
 89 F.S.; conforming cross-references; providing an
 90 effective date.

91

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

93

94 Section 1. Section 379.101, Florida Statutes, is amended
 95 to read:

96 379.101 Definitions.—In construing this chapter ~~these~~
 97 ~~statutes~~, where the context does not clearly indicate otherwise,
 98 the word, phrase, or term:

99 (1) "Authorization" means a number issued by the Fish and
 100 Wildlife Conservation Commission, or its authorized agent, which
 101 serves in lieu of a license or permits and affords the privilege
 102 purchased for a specified period of time.

103 (2) "Beaches" and "shores" shall mean the coastal and
 104 intracoastal shoreline of this state bordering upon the waters

105 of the Atlantic Ocean, the Gulf of Mexico, the Straits of
 106 Florida, and any part thereof, and any other bodies of water
 107 under the jurisdiction of the State of Florida, between the mean
 108 high-water line and as far seaward as may be necessary to
 109 effectively carry out the purposes of this act.

110 (3) "Closed season" shall be that portion of the year
 111 wherein the laws or rules of Florida forbid the taking of
 112 particular species of game or varieties of fish.

113 (4) "Coastal construction" includes any work or activity
 114 which is likely to have a material physical effect on existing
 115 coastal conditions or natural shore processes.

116 (5) "Commercial harvester" means any person, firm, or
 117 corporation that takes, harvests, or attempts to take or harvest
 118 saltwater products for sale or with intent to sell; that is
 119 operating under or is required to operate under a license or
 120 permit or authorization issued pursuant to this chapter; that is
 121 using gear that is prohibited for use in the harvest of
 122 recreational amounts of any saltwater product being taken or
 123 harvested; or that is harvesting any saltwater product in an
 124 amount that is at least two times the recreational bag limit for
 125 the saltwater product being taken or harvested.

126 (6) "Commission" shall mean the Fish and Wildlife
 127 Conservation Commission.

128 (7) "Common carrier" shall include any person, firm, or
 129 corporation, who undertakes for hire, as a regular business, to
 130 transport persons or commodities from place to place offering

131 his or her services to all such as may choose to employ the
 132 common carrier and pay his or her charges.

133 (8) "Coon oysters" are oysters found growing in bunches
 134 along the shore between high-water mark and low-water mark.

135 (9) "Department" shall mean the Department of
 136 Environmental Protection.

137 (10) "Erosion control," "beach preservation," and
 138 "hurricane protection" shall include any activity, work,
 139 program, project, or other thing deemed necessary by the
 140 Department of Environmental Protection to effectively preserve,
 141 protect, restore, rehabilitate, stabilize, and improve the
 142 beaches and shores of this state, as defined above.

143 (11) "Exhibit" means to present or display upon request.

144 (12) "Finfish" means any member of the classes Agnatha,
 145 Chondrichthyes, or Osteichthyes.

146 (13) "Fish and game" means all fresh and saltwater fish,
 147 shellfish, crustacea, sponges, wild birds, and wild animals.

148 (14) "Fish and wildlife" means any member of the animal
 149 kingdom, including, but not limited to, any mammal, fish, bird,
 150 amphibian, reptile, mollusk, crustacean, arthropod, or other
 151 invertebrate.

152 ~~(15)~~ (14) "Fish management area" means a pond, lake, or
 153 other water within a county, or within several counties,
 154 designated to improve fishing for public use, and established
 155 and specifically circumscribed for authorized management by the
 156 commission and the board of county commissioners of the county

157 | in which such waters lie, under agreement between the commission
 158 | and an owner with approval by the board of county commissioners
 159 | or under agreement with the board of county commissioners for
 160 | use of public waters in the county in which such waters lie.

161 | (16)~~(15)~~ "Fish pond" means a body of water that does not
 162 | occur naturally and that has been constructed and is maintained
 163 | primarily for the purpose of fishing.

164 | (17)~~(16)~~ "Food fish" shall include mullet, trout, redfish,
 165 | sheepshead, pompano, mackerel, bluefish, red snapper, grouper,
 166 | black drum, jack crevalle, and all other fish generally used for
 167 | human consumption.

168 | (18)~~(17)~~ "Fresh water," except where otherwise provided by
 169 | law, means all lakes, rivers, canals, and other waterways of
 170 | Florida, to such point or points where the fresh and salt waters
 171 | commingle to such an extent as to become unpalatable and unfit
 172 | for human consumption because of the saline content, or to such
 173 | point or points as may be fixed by order of the commission by
 174 | and with the consent of the board of county commissioners of the
 175 | county or counties to be affected by such order. The
 176 | Steinhatchee River shall be considered fresh water from its
 177 | source to mouth.

178 | (19)~~(18)~~ "Freshwater fish" means all classes of pisces
 179 | that are native to fresh water.

180 | (20)~~(19)~~ "Fur-bearing animals" means muskrat, mink,
 181 | raccoon, otter, civet cat, skunk, red and gray fox, and opossum.

182 | (21)~~(20)~~ "Game" means deer, bear, squirrel, rabbits, and,

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183 | where designated by commission rules, wild hogs, ducks, geese,
 184 | rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse,
 185 | pheasants, quail, and doves.

186 | (22)~~(21)~~ "Guide" shall include any person engaged in the
 187 | business of guiding hunters or hunting parties, fishers or
 188 | fishing parties, for compensation.

189 | (23)~~(22)~~ "Marine fish" means any saltwater species of
 190 | finfish of the classes Agnatha, Chondrichthyes, and
 191 | Osteichthyes, and marine invertebrates in the classes
 192 | Gastropoda, Bivalvia, and Crustacea, or the phylum
 193 | Echinodermata, but does not include nonliving shells or
 194 | echinoderms.

195 | (24)~~(23)~~ "Molest," in connection with any fishing trap or
 196 | its buoy or buoy line, means to touch, bother, disturb, or
 197 | interfere or tamper with, in any manner.

198 | (25)~~(24)~~ A "natural oyster or clam reef" or "bed" or "bar"
 199 | shall be considered and defined as an area containing not less
 200 | than 100 square yards of the bottom where oysters or clams are
 201 | found in a stratum.

202 | (26)~~(25)~~ "Nongame" means all species and populations of
 203 | native wild vertebrates and invertebrates in the state that are
 204 | not defined as game.

205 | (27)~~(26)~~ "Nonresident alien" shall mean those individuals
 206 | from other nations who can provide documentation from the Bureau
 207 | of Citizenship and Immigration Services evidencing permanent
 208 | residency status in the United States. For the purposes of this

209 chapter, a "nonresident alien" shall be considered a
 210 "nonresident."

211 (28)~~(27)~~ "Open season" shall be that portion of the year
 212 wherein the laws of Florida for the preservation of fish and
 213 game permit the taking of particular species of game or
 214 varieties of fish.

215 (29)~~(28)~~ "Private hunting preserve" includes any area set
 216 aside by a private individual or concern on which artificially
 217 propagated game or birds are taken.

218 (30)~~(29)~~ "Reef bunch oysters" are oysters found growing on
 219 the bars or reefs in the open bay and exposed to the air between
 220 high and low tide.

221 (31)~~(30)~~ "Resident" or "resident of Florida" means:

222 (a) For purposes of part VII, a citizen of the United
 223 States who has continuously resided in this state for 1 year
 224 before applying for a hunting, fishing, or other license.
 225 However, for purposes of ss. 379.363, 379.364, 379.3711,
 226 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752,
 227 379.3761, and 379.3762, the term means a citizen of the United
 228 States who has continuously resided in this state for 6 months
 229 before applying for a hunting, fishing, or other license.

230 (b) For purposes of part VI:

231 1. A member of the United States Armed Forces who is
 232 stationed in the state and his or her family members residing
 233 with such member; or

234 2. A person who has declared Florida as his or her only

235 state of residence as evidenced by a valid Florida driver
 236 license or identification card that has both a Florida address
 237 and a Florida residency verified by the Department of Highway
 238 Safety and Motor Vehicles, or, in the absence thereof, one of
 239 the following:

- 240 a. A current Florida voter information card;
- 241 b. A sworn statement manifesting and evidencing domicile
 242 in Florida in accordance with s. 222.17;
- 243 c. Proof of a current Florida homestead exemption; or
- 244 d. For a child younger than 18 years of age, a student
 245 identification card from a Florida school or, if accompanied by
 246 his or her parent at the time of purchase, the parent's proof of
 247 residency.

248 (32)~~(31)~~ "Resident alien" means a person who has
 249 continuously resided in this state for at least 1 year and can
 250 provide documentation from the Bureau of Citizenship and
 251 Immigration Services evidencing permanent residency status in
 252 the United States. For the purposes of this chapter, a "resident
 253 alien" is considered a "resident."

254 (33)~~(32)~~ "Restricted species" means any species of
 255 saltwater products which the state by law, or the Fish and
 256 Wildlife Conservation Commission by rule, has found it necessary
 257 to so designate. The term includes a species of saltwater
 258 products designated by the commission as restricted within a
 259 geographical area or during a particular time period of each
 260 year. Designation as a restricted species does not confer the

261 authority to sell a species pursuant to s. 379.361 if the law or
 262 rule prohibits the sale of the species.

263 (34)~~(33)~~ "Salt water," except where otherwise provided by
 264 law, shall be all of the territorial waters of Florida excluding
 265 all lakes, rivers, canals, and other waterways of Florida from
 266 such point or points where the fresh and salt waters commingle
 267 to such an extent as to become unpalatable because of the saline
 268 content, or from such point or points as may be fixed for
 269 conservation purposes by the Department of Environmental
 270 Protection and the Fish and Wildlife Conservation Commission,
 271 with the consent and advice of the board of county commissioners
 272 of the county or counties to be affected.

273 (35)~~(34)~~ "Saltwater fish" means:

274 (a) Any saltwater species of finfish of the classes
 275 Agnatha, Chondrichthyes, or Osteichthyes and marine
 276 invertebrates of the classes Gastropoda, Bivalvia, or Crustacea,
 277 or of the phylum Echinodermata, but does not include nonliving
 278 shells or echinoderms; and

279 (b) All classes of pisces, shellfish, sponges, and
 280 crustacea native to salt water.

281 (36)~~(35)~~ "Saltwater license privileges," except where
 282 otherwise provided by law, means any license, endorsement,
 283 certificate, or permit issued pursuant to this chapter.

284 (37)~~(36)~~ "Saltwater products" means any species of
 285 saltwater fish, marine plant, or echinoderm, except shells, and
 286 salted, cured, canned, or smoked seafood.

287 (38)~~(37)~~ "Shellfish" shall include oysters, clams, and
 288 whelks.

289 (39)~~(38)~~ "Take" means taking, attempting to take,
 290 pursuing, hunting, molesting, capturing, or killing any wildlife
 291 or freshwater or saltwater fish, or their nests or eggs, by any
 292 means, whether or not such actions result in obtaining
 293 possession of such wildlife or freshwater or saltwater fish or
 294 their nests or eggs.

295 (40)~~(39)~~ "Transport" shall include shipping, transporting,
 296 carrying, importing, exporting, receiving or delivering for
 297 shipment, transportation or carriage or export.

298 Section 2. Section 379.2223, Florida Statutes, is amended
 299 to read:

300 379.2223 Control and management of state game lands.—

301 (1) The Fish and Wildlife Conservation Commission is
 302 authorized to make, adopt, promulgate, amend, repeal, and
 303 enforce all reasonable rules and regulations necessary for the
 304 protection, control, operation, management, or development of
 305 lands or waters owned by, leased by, or otherwise assigned to,
 306 the commission for fish or wildlife management purposes,
 307 including, but not ~~being~~ limited to, the right of ingress and
 308 egress. Before any such rule or regulation is adopted, other
 309 than one relating to wild animal life, marine life, or
 310 freshwater aquatic life, the commission shall obtain the consent
 311 and agreement, in writing, of the owner, in the case of
 312 privately owned lands or waters, or the owner or primary

313 | custodian, in the case of public lands or waters.

314 | (2) A person who violates a rule or regulation adopted
 315 | pursuant to this section is subject to penalties as provided in
 316 | s. 379.401 ~~Any person violating or otherwise failing to comply~~
 317 | ~~with any rule or regulation so adopted commits a misdemeanor of~~
 318 | ~~the second degree, punishable as provided in s. 775.082 or s.~~
 319 | ~~775.083.~~

320 | Section 3. Subsection (3) of section 379.2257, Florida
 321 | Statutes, is amended to read:

322 | 379.2257 Cooperative agreements with United States U.S.
 323 | Forest Service; penalty.—The Fish and Wildlife Conservation
 324 | Commission is authorized and empowered:

325 | (3) In addition to the requirements of chapter 120, notice
 326 | of the making and, ~~adoption, and promulgation~~ of ~~the above~~ rules
 327 | and regulations pursuant to this section shall be given by
 328 | posting the said notices, or copies of the rules and
 329 | regulations, in the offices of the county judges and in the post
 330 | offices within the area to be affected and within 10 miles
 331 | thereof. In addition to the posting of the said notices, ~~as~~
 332 | ~~aforsaid~~, copies of the said notices or ~~of said~~ rules and
 333 | regulations shall ~~also~~ be published in newspapers published at
 334 | the county seats of Baker, Columbia, Marion, Lake, Putnam, and
 335 | Liberty Counties, or so many thereof as have newspapers, once
 336 | between 28 and not more than 35 nor less than 28 days and once
 337 | between 14 and not more than 21 nor less than 14 days before
 338 | ~~prior to~~ the opening of the state hunting season in those said

339 areas. A ~~Any person who violates~~ violating any rules or
 340 regulations of promulgated by the commission to manage such
 341 ~~cover these~~ areas under cooperative agreements between the ~~Fish~~
 342 ~~and Wildlife Conservation~~ commission and the United States
 343 Forest Service is subject to penalties as provided in s.
 344 379.401, ~~none of which shall be in conflict with the laws of~~
 345 ~~Florida, shall be guilty of a misdemeanor of the second degree,~~
 346 ~~punishable as provided in s. 775.082 or s. 775.083.~~

347 Section 4. Paragraph (a) of subsection (2) of section
 348 379.2425, Florida Statutes, is amended, and subsection (4) is
 349 added to that section, to read:

350 379.2425 Spearfishing; definition; limitations; penalty.—

351 (2) (a) Except as otherwise provided by commission rule or
 352 order, spearfishing is prohibited within the boundaries of the
 353 John Pennekamp Coral Reef State Park, the waters of Collier
 354 County, and the area in Monroe County known as Upper Keys, which
 355 includes all salt waters under the jurisdiction of the ~~Fish and~~
 356 ~~Wildlife Conservation~~ commission beginning at the county line
 357 between Miami-Dade and Monroe Counties and running south,
 358 including all of the keys down to and including Long Key.

359 (4) A person who violates this section commits a Level Two
 360 violation under s. 379.401.

361 Section 5. Subsection (2) of section 379.29, Florida
 362 Statutes, is amended to read:

363 379.29 Contaminating fresh waters.—

364 (2) A ~~Any~~ person, firm, or corporation that violates

365 ~~violating any of the provisions of this section commits a Level~~
 366 ~~Two violation under s. 379.401 shall be guilty of a misdemeanor~~
 367 ~~of the second degree, punishable as provided in s. 775.082 or s.~~
 368 ~~775.083 for the first offense, and for the second or subsequent~~
 369 ~~offense shall be guilty of a misdemeanor of the first degree,~~
 370 ~~punishable as provided in s. 775.082 or s. 775.083.~~

371 Section 6. Section 379.295, Florida Statutes, is amended
 372 to read:

373 379.295 Use of explosives and other substances or force
 374 prohibited.—~~A~~ No person may not throw or place, or cause to be
 375 thrown or placed, any dynamite, lyddite, gunpowder, cannon
 376 cracker, acids, filtration discharge, debris from mines, Indian
 377 berries, sawdust, green walnuts, walnut leaves, creosote, oil,
 378 or other explosives or deleterious substance or force into the
 379 fresh waters of this state whereby fish therein are or may be
 380 injured. Nothing in this section may be construed as preventing
 381 the release of water slightly discolored by mining operations or
 382 water escaping from such operations as the result of
 383 providential causes. A person who violates this section commits
 384 a Level Two violation under s. 379.401.

385 Section 7. Section 379.33, Florida Statutes, is amended to
 386 read:

387 379.33 Enforcement of commission rules; ~~penalties for~~
 388 ~~violation of rule.~~—Rules of the Fish and Wildlife Conservation
 389 commission shall be enforced by any law enforcement officer
 390 certified pursuant to s. 943.13. ~~Except as provided under s.~~

391 | ~~379.401, any person who violates or otherwise fails to comply~~
 392 | ~~with any rule adopted by the commission shall be punished~~
 393 | ~~pursuant to s. 379.407(1).~~

394 | Section 8. Section 379.3502, Florida Statutes, is amended
 395 | to read:

396 | 379.3502 License and permit not transferable.—A person may
 397 | ~~not alter or change in any manner, or~~ loan or transfer to
 398 | another person, unless otherwise provided by commission rule or
 399 | order, any license or permit issued pursuant to ~~the provisions~~
 400 | ~~of this chapter, and a~~ nor may any other person, other than the
 401 | person to whom the license or permit ~~it~~ is issued, may not use a
 402 | borrowed or transferred license or permit the same. A person who
 403 | violates this section commits a Level Two violation under s.
 404 | 379.401.

405 | Section 9. Section 379.3503, Florida Statutes, is amended
 406 | to read:

407 | 379.3503 False statement in application for license or
 408 | permit.—A ~~Any~~ person who swears or affirms to any false
 409 | statement in any application for a license or permit provided by
 410 | this chapter commits a Level Two violation under, ~~is guilty of~~
 411 | ~~violating this chapter, and shall be subject to the penalty~~
 412 | ~~provided in~~ s. 379.401, and any false statement contained in any
 413 | application for such license or permit renders the license or
 414 | permit void.

415 | Section 10. Section 379.3504, Florida Statutes, is amended
 416 | to read:

417 379.3504 Entering false information on licenses or
 418 permits.—Whoever knowingly and willfully enters false
 419 information on, or allows or causes false information to be
 420 entered on or shown upon, any license or permit issued under the
 421 ~~provisions of~~ this chapter in order to avoid prosecution or ~~to~~
 422 assist another in avoiding ~~to avoid~~ prosecution, or for any
 423 other wrongful purpose, commits a Level Two violation under
 424 ~~shall be punished as provided in s. 379.401.~~

425 Section 11. Paragraphs (d), (e), and (f) of subsection (1)
 426 of section 379.3511, Florida Statutes, are amended, and
 427 subsection (4) is added to that section, to read:

428 379.3511 Appointment of subagents for the sale of hunting,
 429 fishing, and trapping licenses and permits.—

430 (1) Subagents shall serve at the pleasure of the
 431 commission. The commission may establish, by rule, procedures
 432 for the selection and appointment of subagents. The following
 433 are requirements for appointed subagents ~~so appointed~~:

434 ~~(d) Any person who willfully violates any of the~~
 435 ~~provisions of this section commits a misdemeanor of the second~~
 436 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

437 (d) ~~(e)~~ A subagent may charge and receive as his or her
 438 compensation 50 cents for each license or permit sold. This
 439 charge is in addition to the sum required by law to be collected
 440 for the sale and issuance of each license or permit. This charge
 441 does not apply to the shoreline fishing license; however, for
 442 each shoreline fishing license issued, the subagent may retain

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443 50 cents from other license proceeds otherwise due the
 444 commission.

445 ~~(e)(f)~~ A subagent shall submit payment for and report the
 446 sale of licenses and permits to the commission as prescribed by
 447 the commission.

448 (4) A person who willfully violates this section commits a
 449 Level Two violation under s. 379.401.

450 Section 12. Subsection (18) is added to section 379.354,
 451 Florida Statutes, to read:

452 379.354 Recreational licenses, permits, and authorization
 453 numbers; fees established.—

454 (18) VIOLATION OF SECTION.—Unless otherwise provided by
 455 law, a person who violates this section commits a Level One
 456 violation under s. 379.401.

457 Section 13. Subsections (3) through (7) of section
 458 379.357, Florida Statutes, are amended to read:

459 379.357 Fish and Wildlife Conservation Commission license
 460 program for tarpon; fees; penalties.—

461 (3) A person ~~An individual~~ may not take, kill, or possess
 462 any fish of the species *Megalops atlanticus*, commonly known as
 463 tarpon, unless the person ~~individual~~ has purchased a tarpon tag
 464 and securely attached it through the lower jaw of the fish.

465 ~~(4) Any individual including a taxidermist who possesses a~~
 466 ~~tarpon which does not have a tag securely attached as required~~
 467 ~~by this section commits a Level Two violation under s. 379.401.~~

468 ~~Provided, however,~~ A taxidermist may remove the tag during the

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469 process of mounting a tarpon. The removed tag shall remain with
 470 the fish during any subsequent storage or shipment. The purchase
 471 of a tarpon tag does not authorize the purchaser to harvest or
 472 possess tarpon in violation of commission rules. A person who
 473 violates this subsection commits a Level Two violation under s.
 474 379.401.

475 ~~(4)(5) A person Purchase of a tarpon tag shall not accord~~
 476 ~~the purchaser any right to harvest or possess tarpon in~~
 477 ~~contravention of rules adopted by the commission. No individual~~
 478 may not sell, offer for sale, barter, exchange for merchandise,
 479 transport for sale, either within or without the state, offer to
 480 purchase, or purchase any species of fish known as tarpon. A
 481 person who violates this subsection commits a Level Three
 482 violation under s. 379.401.

483 ~~(5)(6)~~ The commission shall prescribe and provide suitable
 484 forms and tags necessary to carry out the provisions of this
 485 section.

486 ~~(6)(7) The provisions of This section does shall~~ not apply
 487 to anyone who immediately returns a tarpon uninjured to the
 488 water at the place where the fish was caught.

489 Section 14. Section 379.359, Florida Statutes, is amended
 490 to read:

491 379.359 License application provision for voluntary
 492 contribution to Southeastern Guide Dogs, Inc.—The application
 493 for any license for recreational activities issued under this
 494 part must include a check-off provision that permits the

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495 applicant for licensure to make a voluntary contribution of \$2.
 496 The ~~Fish and Wildlife Conservation~~ commission ~~may~~ shall retain
 497 up to 90 cents from each contribution to cover administrative
 498 costs. The remainder shall be distributed quarterly by the ~~Fish~~
 499 ~~and Wildlife Conservation~~ commission to Southeastern Guide Dogs,
 500 Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall
 501 use the contributions to breed, raise, and train guide dogs for
 502 the blind, specifically for the "Paws for Patriots" program,
 503 including in-residence training for veterans who are provided
 504 guide dogs by Southeastern Guide Dogs, Inc.

505 Section 15. Subsection (4) is added to section 379.363,
 506 Florida Statutes, to read:

507 379.363 Freshwater fish dealer's license.—

508 (4) A person who violates this section commits a Level Two
 509 violation under s. 379.401.

510 Section 16. Subsection (5) is added to section 379.364,
 511 Florida Statutes, to read:

512 379.364 License required for fur and hide dealers.—

513 (5) A person who violates this section commits a Level Two
 514 violation under s. 379.401.

515 Section 17. Paragraph (a) of subsection (2) of section
 516 379.365, Florida Statutes, is amended to read:

517 379.365 Stone crab; regulation.—

518 (2) PENALTIES.—For purposes of this subsection, conviction
 519 is any disposition other than acquittal or dismissal, regardless
 520 of whether the violation was adjudicated under any state or

521 federal law.

522 (a) It is unlawful to violate commission rules regulating
 523 stone crab trap certificates and trap tags. No person may use an
 524 expired tag or a stone crab trap tag not issued by the
 525 commission or possess or use a stone crab trap in or on state
 526 waters or adjacent federal waters without having a trap tag
 527 required by the commission firmly attached thereto.

528 ~~1.~~ In addition to any other penalties provided in s.
 529 379.407, for a ~~any~~ commercial harvester who violates this
 530 paragraph, the following administrative penalties apply:—

531 1.a. For a first violation, the commission shall assess an
 532 administrative penalty of up to \$1,000.

533 2.b. For a second violation that occurs within 24 months
 534 after ~~of~~ any previous such violation, the commission shall
 535 assess an administrative penalty of up to \$2,000 and the stone
 536 crab endorsement under which the violation was committed may be
 537 suspended for 12 calendar months.

538 3.c. For a third violation that occurs within 36 months
 539 after ~~of~~ any previous two such violations, the commission shall
 540 assess an administrative penalty of up to \$5,000 and the stone
 541 crab endorsement under which the violation was committed may be
 542 suspended for 24 calendar months.

543 4.d. A fourth violation that occurs within 48 months after
 544 ~~of~~ any three previous such violations, shall result in permanent
 545 revocation of all of the violator's saltwater fishing
 546 privileges, including having the commission proceed against the

547 endorsement holder's saltwater products license in accordance
 548 with s. 379.407.

549 ~~2. Any other person who violates the provisions of this~~
 550 ~~paragraph commits a Level Two violation under s. 379.401.~~

551
 552 Any commercial harvester assessed an administrative penalty
 553 under this paragraph shall, within 30 calendar days after
 554 notification, pay the administrative penalty to the commission,
 555 or request an administrative hearing under ss. 120.569 and
 556 120.57. The proceeds of all administrative penalties collected
 557 under this paragraph shall be deposited in the Marine Resources
 558 Conservation Trust Fund.

559 Section 18. Subsection (5) is added to section 379.3751,
 560 Florida Statutes, to read:

561 379.3751 Taking and possession of alligators; trapping
 562 licenses; fees.—

563 (5) A person who violates this section commits a Level Two
 564 violation under s. 379.401.

565 Section 19. Subsection (3) is added to section 379.3752,
 566 Florida Statutes, to read:

567 379.3752 Required tagging of alligators and hides; fees;
 568 revenues.—The tags provided in this section shall be required in
 569 addition to any license required under s. 379.3751.

570 (3) A person who violates this section commits a Level Two
 571 violation under s. 379.401.

572 Section 20. Subsections (1) through (5) of section

573 | 379.401, Florida Statutes, are amended to read:

574 | 379.401 Penalties and violations; civil penalties for
575 | noncriminal infractions; criminal penalties; suspension and
576 | forfeiture of licenses and permits.—

577 | (1) (a) LEVEL ONE VIOLATIONS.—A person commits a Level One
578 | violation if he or she violates any of the following provisions:

579 | 1. Rules or orders of the commission relating to the
580 | filing of reports or other documents required to be filed by
581 | persons who hold any recreational licenses and permits or any
582 | alligator licenses and permits issued by the commission.

583 | 2. Rules or orders of the commission relating to quota
584 | hunt permits, daily use permits, hunting zone assignments,
585 | camping, alcoholic beverages, vehicles, and check stations
586 | within wildlife management areas or other areas managed by the
587 | commission.

588 | 3. Rules or orders of the commission relating to daily use
589 | permits, alcoholic beverages, swimming, possession of firearms,
590 | operation of vehicles, and watercraft speed within fish
591 | management areas managed by the commission.

592 | 4. Rules or orders of the commission relating to vessel
593 | size or specifying motor restrictions on specified water bodies.

594 | 5. Rules or orders of the commission requiring the return
595 | of unused CITES tags issued under the Statewide Alligator
596 | Harvest Program or the Statewide Nuisance Alligator Program.

597 | 6. Section 379.3003, prohibiting deer hunting unless
598 | required clothing is worn.

599 ~~7.5.~~ Section 379.354(1)-(15), providing for recreational
600 licenses to hunt, fish, and trap.

601 ~~8.6.~~ Section 379.3581, providing hunter safety course
602 requirements.

603 ~~7. Section 379.3003, prohibiting deer hunting unless~~
604 ~~required clothing is worn.~~

605 (b) A person who commits a Level One violation commits a
606 noncriminal infraction and shall be cited to appear before the
607 county court.

608 (c)1. The civil penalty for committing a Level One
609 violation involving the license and permit requirements of s.
610 379.354 is \$50 plus the cost of the license or permit, unless
611 subparagraph 2. applies. Alternatively, except for a person who
612 violates s. 379.354(6), (7), (8)(f), or (8)(h), a person who
613 violates the license and permit requirements of s. 379.354 and
614 is subject to the penalties of this subparagraph may purchase
615 the license or permit, provide proof of such license or permit,
616 and pay a civil penalty of \$50.

617 2. The civil penalty for committing a Level One violation
618 involving the license and permit requirements of s. 379.354 is
619 \$250 ~~\$100~~ plus the cost of the license or permit if the person
620 cited has previously committed the same Level One violation
621 within the preceding 36 months. Alternatively, except for a
622 person who violates s. 379.354(6), (7), (8)(f), or (8)(h), a
623 person who violates the license and permit requirements of s.
624 379.354 and is subject to the penalties of this subparagraph may

625 purchase the license or permit, provide proof of such license or
 626 permit, and pay a civil penalty of \$250.

627 (d)1. The civil penalty for any other Level One violation
 628 is \$50 unless subparagraph 2. applies.

629 2. The civil penalty for any other Level One violation is
 630 \$250 ~~\$100~~ if the person cited has previously committed the same
 631 Level One violation within the preceding 36 months.

632 (e) A person cited for a Level One violation shall sign
 633 and accept a citation to appear before the county court. The
 634 issuing officer may indicate on the citation the time and
 635 location of the scheduled hearing and shall indicate the
 636 applicable civil penalty.

637 (f) A person cited for a Level One violation may pay the
 638 civil penalty, and, if applicable, provide proof of the license
 639 or permit required under s. 379.354 by mail or in person within
 640 30 days after receipt of the citation. If the civil penalty is
 641 paid, the person shall be deemed to have admitted committing the
 642 Level One violation and to have waived his or her right to a
 643 hearing before the county court. Such admission may not be used
 644 as evidence in any other proceedings except to determine the
 645 appropriate fine for any subsequent violations.

646 (g) A person who refuses to accept a citation, who fails
 647 to pay the civil penalty for a Level One violation, or who fails
 648 to appear before a county court as required commits a
 649 misdemeanor of the second degree, punishable as provided in s.
 650 775.082 or s. 775.083.

651 (h) A person who elects to appear before the county court
 652 or who is required to appear before the county court shall be
 653 deemed to have waived the limitations on civil penalties
 654 provided under paragraphs (c) and (d). After a hearing, the
 655 county court shall determine if a Level One violation has been
 656 committed, and if so, may impose a civil penalty of not less
 657 than \$50 for a first-time violation, and not more than \$500 for
 658 subsequent violations. A person found guilty of committing a
 659 Level One violation may appeal that finding to the circuit
 660 court. The commission of a violation must be proved beyond a
 661 reasonable doubt.

662 (i) A person cited for violating the requirements of s.
 663 379.354 relating to personal possession of a license or permit
 664 may not be convicted if, before ~~prior to~~ or at the time of a
 665 county court hearing, the person produces the required license
 666 or permit for verification by the hearing officer or the court
 667 clerk. The license or permit must have been valid at the time
 668 the person was cited. The clerk or hearing officer may assess a
 669 \$10 fee for costs under this paragraph.

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

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

675 2. Rules or orders of the commission establishing bag,
 676 possession, or size limits or restricting methods of taking

677 | wildlife, freshwater fish, or saltwater fish.

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

681 | 4. Rules or orders of the commission relating to the
682 | feeding of saltwater fish.

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

685 | 6. Rules or orders of the commission relating to
686 | restricted hunting areas, critical wildlife areas, or bird
687 | sanctuaries.

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

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

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

694 | 10. Rules or orders of the commission prohibiting the
695 | unlawful use of ~~finfish~~ traps, unless otherwise provided by law.

696 | 11. Rules or orders of the commission requiring the
697 | maintenance of records relating to alligators.

698 | 12. Rules or orders of the commission requiring the return
699 | of unused CITES tags issued under an alligator program other
700 | than the Statewide Alligator Harvest Program or the Statewide
701 | Nuisance Alligator Program.

702 | ~~13.11.~~ All requirements or prohibitions under ~~in~~ this

- 703 chapter which are not otherwise classified.
- 704 14. Section 379.105, prohibiting the intentional
- 705 harassment of hunters, fishers, or trappers.
- 706 15. Section 379.2421, relating to fishers and equipment.
- 707 16. Section 379.2425, relating to spearfishing.
- 708 17. Section 379.29, prohibiting the contamination of fresh
- 709 waters.
- 710 18. Section 379.295, prohibiting the use of explosives and
- 711 other substances or force in fresh waters.
- 712 19. Section 379.3502, prohibiting the loan or transfer of
- 713 a license or permit and the use of a borrowed or transferred
- 714 license or permit.
- 715 20. Section 379.3503, prohibiting false statements in an
- 716 application for a license or permit.
- 717 21. Section 379.3504, prohibiting entering false
- 718 information on licenses or permits.
- 719 22. Section 379.3511, relating to the sale of hunting,
- 720 fishing, and trapping licenses and permits by subagents.
- 721 23. Section 379.357(3), prohibiting the taking, killing,
- 722 or possession of tarpon without purchasing a tarpon tag.
- 723 24. Section 379.363, relating to freshwater fish dealer
- 724 licenses.
- 725 25. Section 379.364, relating to fur and hide dealer
- 726 licenses.
- 727 26. Section 379.365(2)(b), prohibiting the theft of stone
- 728 crab trap contents or trap gear.

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

731 28. Section 379.3671(2)(c), except s. 379.3671(2)(c)5.,
 732 prohibiting the theft of spiny lobster trap contents or trap
 733 gear.

734 29. Section 379.3751, relating to licenses for the taking
 735 and possession of alligators.

736 30. Section 379.3752, relating to tagging requirements for
 737 alligators and hides.

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

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

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

745 31.15. Section 379.413, prohibiting the unlawful taking of
 746 bonfish.

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

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

752 ~~18. Section 379.3671(2)(c), prohibiting the possession or~~
 753 ~~use of spiny lobster traps without trap tags or certificates and~~
 754 ~~theft of trap contents or trap gear.~~

755 | ~~19. Section 379.357, prohibiting the possession of tarpon~~
 756 | ~~without purchasing a tarpon tag.~~

757 | ~~20. Section 379.105, prohibiting the intentional~~
 758 | ~~harassment of hunters, fishers, or trappers.~~

759 | (b)1. A person who commits a Level Two violation but who
 760 | has not been convicted of a Level Two or higher violation within
 761 | the past 3 years commits a misdemeanor of the second degree,
 762 | punishable as provided in s. 775.082 or s. 775.083.

763 | 2. Unless the stricter penalties in subparagraph 3. or
 764 | subparagraph 4. apply, a person who commits a Level Two
 765 | violation within 3 years after a previous conviction for a Level
 766 | Two or higher violation commits a misdemeanor of the first
 767 | degree, punishable as provided in s. 775.082 or s. 775.083, with
 768 | a minimum mandatory fine of \$250.

769 | 3. Unless the stricter penalties in subparagraph 4. apply,
 770 | a person who commits a Level Two violation within 5 years after
 771 | two previous convictions for a Level Two or higher violation,
 772 | commits a misdemeanor of the first degree, punishable as
 773 | provided in s. 775.082 or s. 775.083, with a minimum mandatory
 774 | fine of \$500 and a suspension of any recreational license or
 775 | permit issued under s. 379.354 for 1 year. Such suspension shall
 776 | include the suspension of the privilege to obtain such license
 777 | or permit and the suspension of the ability to exercise any
 778 | privilege granted under any exemption in s. 379.353.

779 | 4. A person who commits a Level Two violation within 10
 780 | years after three previous convictions for a Level Two or higher

781 violation commits a misdemeanor of the first degree, punishable
 782 as provided in s. 775.082 or s. 775.083, with a minimum
 783 mandatory fine of \$750 and a suspension of any recreational
 784 license or permit issued under s. 379.354 for 3 years. Such
 785 suspension shall include the suspension of the privilege to
 786 obtain such license or permit and the suspension of the ability
 787 to exercise any privilege granted under s. 379.353. If the
 788 recreational license or permit being suspended was an annual
 789 license or permit, any privileges under ss. 379.353 and 379.354
 790 may not be acquired for a 3-year period following the date of
 791 the violation.

792 (3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level
 793 Three violation if he or she violates any of the following
 794 provisions:

795 1. Rules or orders of the commission prohibiting the sale
 796 of saltwater fish.

797 2. Rules or orders of the commission prohibiting the
 798 illegal importation or possession of exotic marine plants or
 799 animals.

800 ~~3. Section 379.407(2), establishing major violations.~~

801 ~~4. Section 379.407(4), prohibiting the possession of~~
 802 ~~certain finfish in excess of recreational daily bag limits.~~

803 3.5. Section 379.28, prohibiting the importation of
 804 freshwater fish.

805 4. Section 379.3014, prohibiting the illegal sale or
 806 possession of alligators.

807 ~~5.6.~~ Section 379.354(17), prohibiting the taking of game,
 808 freshwater fish, or saltwater fish while a required license is
 809 suspended or revoked.

810 6. Section 379.357(4), prohibiting the sale, transfer, or
 811 purchase of tarpon.

812 ~~7. Section 379.3014, prohibiting the illegal sale or~~
 813 ~~possession of alligators.~~

814 ~~7.8.~~ Section 379.404(1), (3), and (6), prohibiting the
 815 illegal taking and possession of deer and wild turkey.

816 ~~8.9.~~ Section 379.406, prohibiting the possession and
 817 transportation of commercial quantities of freshwater game fish.

818 9. Section 379.407(2), establishing major violations.

819 10. Section 379.407(4), prohibiting the possession of
 820 certain finfish in excess of recreational daily bag limits.

821 (b)1. A person who commits a Level Three violation but who
 822 has not been convicted of a Level Three or higher violation
 823 within the past 10 years commits a misdemeanor of the first
 824 degree, punishable as provided in s. 775.082 or s. 775.083.

825 2. A person who commits a Level Three violation within 10
 826 years after a previous conviction for a Level Three or higher
 827 violation commits a misdemeanor of the first degree, punishable
 828 as provided in s. 775.082 or s. 775.083, with a minimum
 829 mandatory fine of \$750 and a suspension of any recreational
 830 license or permit issued under s. 379.354 for the remainder of
 831 the period for which the license or permit was issued up to 3
 832 years. Such suspension shall include the suspension of the

833 | privilege to obtain such license or permit and the ability to
 834 | exercise any privilege granted under s. 379.353. If the
 835 | recreational license or permit being suspended was an annual
 836 | license or permit, any privileges under ss. 379.353 and 379.354
 837 | may not be acquired for a 3-year period following the date of
 838 | the violation.

839 | 3. A person who commits a violation of s. 379.354(17)
 840 | shall receive a mandatory fine of \$1,000. Any privileges under
 841 | ss. 379.353 and 379.354 may not be acquired for a 5-year period
 842 | following the date of the violation.

843 | (4)(a) LEVEL FOUR VIOLATIONS.—A person commits a Level
 844 | Four violation if he or she violates any of the following
 845 | provisions:

846 | 1. Section 379.354(16), prohibiting the making, forging,
 847 | counterfeiting, or reproduction of a recreational license or the
 848 | possession of same without authorization from the commission.

849 | ~~2.1.~~ Section 379.365(2)(c), prohibiting criminal
 850 | activities relating to the taking of stone crabs.

851 | ~~3.2.~~ Section 379.366(4)(c), prohibiting criminal
 852 | activities relating to the taking and harvesting of blue crabs.

853 | ~~4.3.~~ Section 379.367(4), prohibiting the willful
 854 | molestation of spiny lobster gear.

855 | ~~5.4.~~ Section 379.3671(2)(c)5., prohibiting the unlawful
 856 | reproduction, possession, sale, trade, or barter of spiny
 857 | lobster trap tags or certificates.

858 | ~~5. Section 379.354(16), prohibiting the making, forging,~~

859 ~~counterfeiting, or reproduction of a recreational license or~~
 860 ~~possession of same without authorization from the commission.~~

861 6. Section 379.404(5), prohibiting the sale of illegally-
 862 taken deer or wild turkey.

863 7. Section 379.405, prohibiting the molestation or theft
 864 of freshwater fishing gear.

865 8. Section 379.409, prohibiting the unlawful killing,
 866 injuring, possessing, or capturing of alligators or other
 867 crocodilia or their eggs.

868 9. Section 379.411, prohibiting the intentional killing or
 869 wounding of any species designated as endangered, threatened, or
 870 of special concern.

871 10. Section 379.4115, prohibiting the killing of any
 872 Florida or wild panther.

873 (b) A person who commits a Level Four violation commits a
 874 felony of the third degree, punishable as provided in s.
 875 775.082, ~~or~~ s. 775.083, or s. 775.084.

876 (5) ILLEGAL ACTIVITIES WHILE COMMITTING TRESPASS
 877 VIOLATIONS OF CHAPTER.—In addition to any other penalty provided
 878 by law, a person who violates the criminal provisions of this
 879 chapter or rules or orders of the commission by illegally
 880 killing, taking, possessing, or selling fish and wildlife as
 881 defined in s. 379.101 in or out of season while violating
 882 chapter 810 shall pay a fine of \$500 for each such violation,
 883 plus court costs and any restitution ordered by the court. All
 884 finest collected under this subsection shall be remitted by the

885 clerk of the court to the Department of Revenue to be deposited
 886 into the State Game Trust Fund ~~Except as provided in this~~
 887 ~~chapter.~~

888 ~~(a) A person who commits a violation of any provision of~~
 889 ~~this chapter commits, for the first offense, a misdemeanor of~~
 890 ~~the second degree, punishable as provided in s. 775.082 or s.~~
 891 ~~775.083.~~

892 ~~(b) A person who is convicted of a second or subsequent~~
 893 ~~violation of any provision of this chapter commits a misdemeanor~~
 894 ~~of the first degree, punishable as provided in s. 775.082 or s.~~
 895 ~~775.083.~~

896 Section 21. Section 379.403, Florida Statutes, is
 897 repealed.

898 Section 22. Subsection (1) of section 379.409, Florida
 899 Statutes, is amended, and subsection (4) is added to that
 900 section, to read:

901 379.409 Illegal killing, possessing, or capturing of
 902 alligators or other crocodilia or eggs; confiscation of
 903 equipment.—

904 (1) A person may not ~~It is unlawful to~~ intentionally kill,
 905 injure, possess, or capture, or attempt to kill, injure,
 906 possess, or capture, an alligator or other crocodilian, or the
 907 eggs of an alligator or other crocodilian, unless authorized by
 908 ~~the rules of the Fish and Wildlife Conservation~~ commission. ~~Any~~
 909 ~~person who violates this section is guilty of a felony of the~~
 910 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~

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911 | ~~or s. 775.084, in addition to such other punishment as may be~~
 912 | ~~provided by law.~~ Any equipment, including, but not limited to,
 913 | weapons, vehicles, boats, and lines, used by a person in ~~the~~
 914 | ~~commission of~~ a violation of any law, rule, regulation, or order
 915 | relating to alligators or other crocodilia or the eggs of
 916 | alligators or other crocodilia shall, upon conviction of such
 917 | person, be confiscated by the ~~Fish and Wildlife Conservation~~
 918 | commission and disposed of according to rules and regulations of
 919 | the commission. The arresting officer shall promptly make a
 920 | return of the seizure, describing in detail the property seized
 921 | and the facts and circumstances under which it was seized,
 922 | including the names of all persons known to the officer who have
 923 | an interest in the property.

924 | (4) A person who violates this section commits a Level
 925 | Four violation under s. 379.401, in addition to such other
 926 | punishment as provided by law.

927 | Section 23. Section 379.411, Florida Statutes, is amended
 928 | to read:

929 | 379.411 Intentional killing or wounding of any species
 930 | designated as endangered, threatened, or of special concern;
 931 | ~~criminal penalties. It is unlawful for~~ A person may not ~~to~~
 932 | intentionally kill or wound any fish or wildlife ~~of a~~ species
 933 | designated by the ~~Fish and Wildlife Conservation~~ commission as
 934 | endangered, threatened, or of special concern, or ~~to~~
 935 | intentionally destroy the eggs or nest of any such fish or
 936 | wildlife, unless authorized by ~~except as provided for in the~~

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937 rules of the commission. A ~~Any~~ person who violates this section
 938 commits a Level Four violation under s. 379.401 ~~provision with~~
 939 ~~regard to an endangered or threatened species is guilty of a~~
 940 ~~felony of the third degree, punishable as provided in s.~~
 941 ~~775.082, s. 775.083, or s. 775.084.~~

942 Section 24. Subsection (3) of section 379.4115, Florida
 943 Statutes, is amended to read:

944 379.4115 Florida or wild panther; killing prohibited;
 945 penalty.—

946 (3) A person who violates this section commits a Level
 947 Four violation under s. 379.401 ~~convicted of unlawfully killing~~
 948 ~~a Florida panther, or unlawfully killing any member of the~~
 949 ~~species of panther occurring in the wild, is guilty of a felony~~
 950 ~~of the third degree, punishable as provided in s. 775.082, s.~~
 951 ~~775.083, or s. 775.084.~~

952 Section 25. Paragraph (a) of subsection (2) of section
 953 379.3004, Florida Statutes, is amended to read:

954 379.3004 Voluntary Authorized Hunter Identification
 955 Program.—

956 (2) Any person hunting on private land enrolled in the
 957 Voluntary Authorized Hunter Identification Program shall have
 958 readily available on the land at all times when hunting on the
 959 property written authorization from the owner or his or her
 960 authorized representative to be on the land for the purpose of
 961 hunting. The written authorization shall be presented on demand
 962 to any law enforcement officer, the owner, or the authorized

963 agent of the owner.

964 (a) For purposes of this section, the term "hunting" means
 965 to be engaged in or reasonably equipped to engage in the pursuit
 966 or taking by any means of any animal described in s. 379.101(20)
 967 or (21) ~~379.101(19) or (20)~~, and the term "written
 968 authorization" means a card, letter, or other written instrument
 969 which shall include, but need not be limited to, the name of the
 970 person or entity owning the property, the name and signature of
 971 the person granting the authorization, a description by
 972 township, range, section, partial section, or other geographical
 973 description of the land to which the authorization applies, and
 974 a statement of the time period during which the authorization is
 975 valid.

976 Section 26. Paragraph (d) of subsection (5) of section
 977 379.337, Florida Statutes, is amended to read:

978 379.337 Confiscation, seizure, and forfeiture of property
 979 and products.—

980 (5) CONFISCATION AND SALE OF PERISHABLE SALTWATER
 981 PRODUCTS; PROCEDURE.—

982 (d) For purposes of confiscation under this subsection,
 983 the term "saltwater products" has the meaning set out in s.
 984 379.101(37) ~~379.101(36)~~, except that the term does not include
 985 saltwater products harvested under the authority of a
 986 recreational license unless the amount of such harvested
 987 products exceeds three times the applicable recreational bag
 988 limit for trout, snook, or redfish.

989 Section 27. Paragraph (b) of subsection (4) of section
 990 589.19, Florida Statutes, is amended to read:

991 589.19 Creation of certain state forests; naming of
 992 certain state forests; Operation Outdoor Freedom Program.—

993 (4)

994 (b) Participation in the Operation Outdoor Freedom Program
 995 shall be limited to Florida residents, as defined in s.

996 379.101(31)(b) ~~379.101(30)(b)~~, who:

997 1. Are honorably discharged military veterans certified by
 998 the United States Department of Veterans Affairs or its
 999 predecessor or by any branch of the United States Armed Forces
 1000 to be at least 30 percent permanently service-connected
 1001 disabled;

1002 2. Have been awarded the Military Order of the Purple
 1003 Heart; or

1004 3. Are active duty servicemembers with a service-connected
 1005 injury as determined by his or her branch of the United States
 1006 Armed Forces.

1007

1008 Proof of eligibility under this subsection, as prescribed by the
 1009 Florida Forest Service, may be required.

1010 Section 28. Paragraph (h) of subsection (2) of section
 1011 810.09, Florida Statutes, is amended to read:

1012 810.09 Trespass on property other than structure or
 1013 conveyance.—

1014 (2)

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1015 (h) Any person who in taking or attempting to take any
1016 animal described in s. 379.101(20) or (21) ~~379.101(19) or (20)~~,
1017 or in killing, attempting to kill, or endangering any animal
1018 described in s. 585.01(13) knowingly propels or causes to be
1019 propelled any potentially lethal projectile over or across
1020 private land without authorization commits trespass, a felony of
1021 the third degree, punishable as provided in s. 775.082, s.
1022 775.083, or s. 775.084. For purposes of this paragraph, the term
1023 "potentially lethal projectile" includes any projectile launched
1024 from any firearm, bow, crossbow, or similar tensile device. This
1025 section does not apply to any governmental agent or employee
1026 acting within the scope of his or her official duties.

1027 Section 29. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB GVOPS 16-04 OGSR/Local Government Audit and Investigative Reports
SPONSOR(S): Government Operations Subcommittee, Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
1) State Affairs Committee		Toliver <i>LT</i>	Camechis <i>[Signature]</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for audit or investigative reports prepared for or on behalf of a unit of local government. The exemption also applies to audit workpapers and notes and information received, produced, or derived from an investigation. The exemption expires when the audit or investigation is final or the investigation is no longer active.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, 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 (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.²

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.³

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.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Local Government Auditing

Current law requires local governments to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the previous fiscal year.⁶ DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database.

Current law provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within nine months after the end of the fiscal year.⁷ The audit must be conducted by an independent certified public accountant retained by the local government and paid for from public funds.⁸

Public Record Exemption under Review

Prior to 2011, the public record exemption under review only provided an exemption for the audit report of an internal auditor prepared for or on behalf of a unit of local government and for the audit

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 218.32(1), F.S.

⁷ Section 218.39(1), F.S.

⁸ *Id.*

workpapers and notes, until such time as the audit report became final.⁹ In 2011, the Legislature expanded the public record exemption to include investigative reports of the inspector general, as well as any information received, produced, or derived from an investigation. The public record exemption expires once the investigation is complete or is no longer active.¹⁰

An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government. In addition, an investigation is considered active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.¹¹

The term “unit of local government” is defined to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.¹²

The 2011 public necessity statement for the public record exemption under review finds that the exemption is necessary “because the release of such information could potentially be defamatory to an individual or entity under audit or investigation, causing unwarranted damage to the good name or reputation of an individual or company, or could significantly impair an administrative or criminal investigation.”¹³

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹⁴

During the 2015 interim, subcommittee staff sent questionnaires to counties and municipalities as part of the Open Government Sunset Review process. The respondents recommended reenactment of the exemption and provided that if the exemption were to expire, incomplete information might be released that could be defamatory to the party being audited or investigated. In addition, entities being investigated might be less likely to be forthcoming with information regarding the audit or investigation.¹⁵

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government, until the audit or investigation is final or the investigation is no longer active.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., to save from repeal the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government.

Section 2 provides an effective date of October 1, 2016.

⁹ Section 119.0713(2), F.S. (2010).

¹⁰ Chapter 2011-87, L.O.F.; codified as s. 119.0713(2)(a), F.S.

¹¹ Section 119.0713(2)(a), F.S.

¹² *Id.*

¹³ Section 2, ch. 2011-87, L.O.F.

¹⁴ Section 119.0713(2)(b), F.S.

¹⁵ Open Government Sunset Review of s. 119.0713, F.S., relating to local government audits and investigations, questionnaire by House and Senate staff. Questionnaire responses are on file with the Government Operations Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.0713, F.S.,
relating to an exemption from public record
requirements for certain information related to an
audit report of an internal auditor or an
investigative report of an inspector general prepared
for or on behalf of a unit of local government;
removing the scheduled repeal of the exemption;
reorganizing the exemption; providing an effective
date.

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

Section 1. Subsection (2) of section 119.0713, Florida
Statutes, is amended to read:

119.0713 Local government agency exemptions from
inspection or copying of public records.-

(2) (a) As used in this subsection, the term "unit of local
government" means a county, municipality, special district,
local agency, authority, consolidated city-county government, or
any other local governmental body or public body corporate or
politic authorized or created by general or special law.

(b) The audit report of an internal auditor and the
investigative report of the inspector general prepared for or on
behalf of a unit of local government becomes a public record

27 | when the audit or investigation becomes final. ~~As used in this~~
 28 | ~~subsection, the term "unit of local government" means a county,~~
 29 | ~~municipality, special district, local agency, authority,~~
 30 | ~~consolidated city-county government, or any other local~~
 31 | ~~governmental body or public body corporate or politic authorized~~
 32 | ~~or created by general or special law.~~ An audit or investigation
 33 | becomes final when the audit report or investigative report is
 34 | presented to the unit of local government. Audit workpapers and
 35 | notes related to such audit and information received, produced,
 36 | or derived from an investigation are confidential and exempt
 37 | from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 38 | until the audit or investigation is complete and the audit
 39 | report becomes final or when the investigation is no longer
 40 | active. An investigation is active if it is continuing with a
 41 | reasonable, good faith anticipation of resolution and with
 42 | reasonable dispatch.

43 | ~~(b) Paragraph (a) is subject to the Open Government Sunset~~
 44 | ~~Review Act in accordance with s. 119.15, and shall stand~~
 45 | ~~repealed on October 2, 2016, unless reviewed and saved from~~
 46 | ~~repeal through reenactment by the Legislature.~~

47 | Section 2. This act shall take effect October 1, 2016.