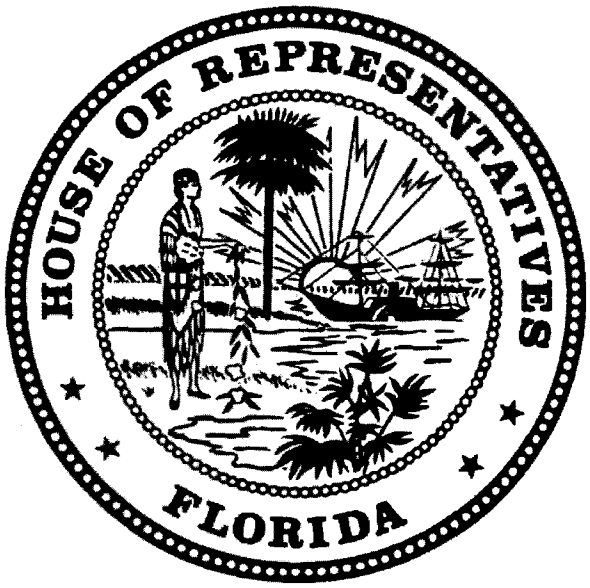

Agriculture & Natural Resources Subcommittee

Tuesday, March 24, 2015
3:30 pm
Reed Hall

Steve Crisafulli
Speaker

Tom Goodson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time:	Tuesday, March 24, 2015 03:30 pm
End Date and Time:	Tuesday, March 24, 2015 05:30 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 137 Civil Liability of Farmers by Rader
HB 869 Broward County by Clarke-Reed
HB 787 Recycled and Recovered Materials by Peters

Consideration of the following proposed committee substitute(s):

PCS for HB 733 -- Petroleum Restoration Program

NOTICE FINALIZED on 03/20/2015 16:19 by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Civil Liability of Farmers
SPONSOR(S): Rader
TIED BILLS: None **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
2) Agriculture & Natural Resources Subcommittee		Hastings CH	Blalock AFB
3) Judiciary Committee			

SUMMARY ANALYSIS

Removing produce or crops remaining in the fields after harvest, generally by hand, is commonly referred to as "gleaning."

A farmer who allows gleaning after harvest is exempt from some civil liability arising from any injury or death resulting from the condition of the land, or from the condition of the produce or crop harvested. The exemption from civil liability does not apply if injury or death results from gross negligence, intentional act, or a known dangerous condition not disclosed by the farmer.

The bill extends the current exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time. The bill also provides that the exemption from civil liability does not apply if injury or death directly results from failure of the farmer to warn of a dangerous condition of which the farmer has actual knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Landowner Liability in General

A person who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff, the plaintiff suffered damages as a result of the landowner's breach, and the damages were actually and proximately caused by the landowner's breach.[1] A landowner's duty of care to persons on his or her land is governed by the status of the injured person.

An "invitee" is a person who was invited to enter the land.[2] Florida law defines "invitation" to mean "that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs."[3] The duties owed to most invitees are the duty to keep property in reasonably safe condition and the duty to warn of concealed dangers that are known or should be known to the property holder and that the invitee cannot discover through the exercise of due care.[4]

Farms and Gleaning

The historical use of the term "gleaning" refers to the practice of allowing persons to pick up crops in the field after the normal harvest. Most of the food available for gleaning is food that was missed by mechanical harvesting implements and thus only available for harvest by hand. Gleaning by volunteers on behalf of local charities is a time-honored tradition in farming communities.

Farm Liability in Statute

Current law in s. 768.137, F.S., provides that any farmer who, without receiving compensation, allows persons to enter his or her land for the purpose of removing produce or crops remaining in the fields *after harvest* is exempt from civil liability arising from any injury or death resulting from the condition of the land, produce, or crop. However, this exemption from civil liability does not apply if injury or death directly results from the gross negligence, intentional act, or from a known dangerous condition not disclosed by the farmer.

The exemption from civil liability does not apply to a farmer who allows a gleaning at any time other than after harvest. The liability standard for such farmer would be that described above under *Landowner Liability in General.*

Effect of Proposed Changes

The bill amends s. 768.137, F.S., to:

- Extend the exemption from civil liability to farmers who allow gratuitous harvesting of crops at any time.
- Provide that the exemption from civil liability does not apply if injury or death directly results from the failure of the farmer to warn of a dangerous condition of which the farmer has actual

[1] 74 Am. Jur. 2d Torts s. 7 (2013).
[2] *Post v. Lunney,* 261 So.2d 147, 147-48 (Fla. 1972).
[3] s. 768.075(3)(a)1., F.S.
[4] *See, e.g., Dampier v. Morgan Tire & Auto, LLC,* 82 So.3d 204, 205 (Fla. 5th DCA 2012).

knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land.

- Make grammatical and style improvements.

B. SECTION DIRECTORY:

Section 1 amends s. 768.137, F.S., regarding the limitation for civil liability for certain farmers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues. According to the Department of Agriculture and Consumer Services, the bill will not have an economic impact on the department.[5]

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance and litigation costs paid by farmers who allow gratuitous gleaning of crops at any time of the year may be reduced as a result of the expanded exemption from civil liability. In addition, farmers may be more likely to allow gratuitous gleaning of crops as a result of the extension.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

[5] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2015 House Bill 137 (Jan. 12, 2015).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to civil liability of farmers; amending s. 768.137, F.S.; revising an exemption from civil liability for farmers who gratuitously allow a person to enter upon their land for the purpose of removing farm produce or crops; revising applicability of the exemption; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 768.137, Florida Statutes, are amended to read:

768.137 Definition; limitation of civil liability for certain farmers; exception.—

(2) A ~~Any~~ farmer who gratuitously allows a person ~~persons~~ to enter upon the farmer's ~~her or his own~~ land for the purpose of removing ~~any~~ farm produce or crops is ~~remaining in the fields following the harvesting thereof, shall be~~ exempt from civil liability:

(a) Arising out of any injury or the death of such person due to ~~resulting from~~ the nature or condition of the ~~such~~ land; or

(b) Arising out of any injury or death due to the nature, age, or condition of the ~~any such~~ farm produce or crops removed by such person ~~crop~~.

(3) The exemption from civil liability provided for in

this section does ~~shall~~ not apply if injury or death directly results from the gross negligence or~~,~~ intentional act of the farmer~~,~~ or the failure of the farmer to warn of a dangerous condition of which the farmer has actual knowledge unless the dangerous condition would be obvious to a person entering upon the farmer's land ~~from known dangerous conditions not disclosed by the farmer~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 733 Petroleum Restoration Program
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Moore AM	Blalock AFB

SUMMARY ANALYSIS

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

In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems. The SUPER Act led to the creation of the Petroleum Restoration Program (Restoration Program), which establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup. Under the Restoration Program, eligible contaminated sites are rehabilitated by the state in priority order.

As of February 2015, there are approximately 18,400 sites eligible for state funding. Of these, approximately 8,400 have been rehabilitated and closed, approximately 5,000 are currently undergoing some phase of rehabilitation, and approximately 5,000 await rehabilitation.

Two programs under the Restoration Program allow sites to receive rehabilitation funding out of priority order under certain circumstances. These programs are the Low-Scored Site Initiative and Advanced Cleanup.

The bill makes various changes to the Low-Scored Site Initiative and Advanced Cleanup. The bill changes the name of the Low-Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owners. The bill also revises the criteria that must be met to participate in LRSI. In addition, the bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund LRSI from $10 million to $15 million and increases the funding limit per site from $30,000 to $35,000.

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10. The bill also increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million.

The bill may have an indeterminate negative fiscal impact on state government and an indeterminate positive fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Petroleum Restoration Program

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

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

Site Rehabilitation

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

State Funding Assistance for Rehabilitation

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

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

the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

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

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

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

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

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

As of February 2015, there are approximately 18,400 sites eligible for state funding through one of the above programs. Of these, approximately 8,400 have been rehabilitated and closed, approximately 5,000 are currently undergoing some phase of rehabilitation, and approximately 5,000 await rehabilitation.

Inland Protection Trust Fund

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

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[18] Sites currently in the Restoration Program range in score from five to 115 points, with a score of 115 representing a substantial threat and a score of five representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[19] The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget. Currently, the threshold is set at 30 points.

Expediting Site Rehabilitation

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

Advanced Cleanup

Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) is a program that was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.[20] The purpose of creating Advanced Cleanup

[15] Section 376.3071(3)-(4), F.S.
[16] Sections 206.9935(3) and 376.3071(6), F.S.
[17] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[18] Chapter 62-771.100, F.A.C.
[19] Chapter 62-771.300, F.A.C.
[20] Section 376.30713(1), F.S.

was to facilitate property transactions or public works projects on contaminated sites.[21] To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).[22]

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.[23] The cost share must be at least 25 percent of the total cost of rehabilitation.[24] For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.[25] Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.[26]

In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[27] Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.[28] The Department may enter into Advanced Cleanup contracts for a total of up to $15 million per fiscal year,[29] and no more than $5 million per fiscal year may be approved for rehabilitation work at an individual facility.[30]

Low Scored Site Initiative

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

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.[31]

An assessment is conducted to determine whether the above criteria are met.[32] The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[33]

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[21] *Id.*
[22] For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[23] Section 376.30713(2)(a), F.S.
[24] *Id.*
[25] Section 376.30713(1)(d)-(2)(a), F.S.
[26] Section 376.30713(2)(a)1., F.S.
[27] Section 376.30713(2)(a), F.S.
[28] Section 376.30713(2)(b), F.S.
[29] Section 376.30713(4), F.S.
[30] A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.
[31] Section 376.3071(11)(b)1., F.S.

Funding for LSSI is limited to $10 million per fiscal year, which may only be used to fund site assessments.[34] Each site has a funding cap of $30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.[35] Funds are allocated on a first-come, first-served basis.[36] Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.[37]

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

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.[38]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.[39]
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.[40]

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.[41] LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the $30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.[42] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Effect of Proposed Changes

Low-risk Site Initiative

The bill changes the name of the Low Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and makes various changes to the program. The bill requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owners.

To participate in the LRSI, the bill requires a property owner or responsible party to submit a "No Further Action Proposal" that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less.

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[32] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).
[33] *Id.* at 3.
[34] Section 376.3071(11)(b)3.c., F.S.
[35] *Id.*
[36] *Id.*
[37] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 1-2 (2013).
[38] Section 376.3071(11)(b)2., F.S.
[39] *Id.*
[40] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).
[41] *Id.* at 11.
[42] *Id.*

- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment.
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre.
- Allows the presence of groundwater containing petroleum products' chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the Florida Department of Transportation.
- Adds a requirement that the groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.

If DEP determines that the property owner or responsible party has demonstrated that these conditions are met, DEP must issue a site rehabilitation completion order that incorporates a "No Further Action Proposal." This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LRSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if DEP determines that the assessment and limited remediation will likely result in a "No Further Action" determination. The approval may be provided in one or more task assignments, or modifications thereof, but the total amount authorized for a particular site may not exceed the amount specified in chapter 287, F.S.,[43] for a Category Two purchasing category, which is currently $35,000. This is an increase from the current LRSI funding limit of $30,000. The bill authorizes DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill requires DEP to procure contractual services for LRSI in accordance with chapter 287, F.S., and applicable DEP rules in order to ensure the work is conducted in a cost-effective manner.

The bill increases the amount of time within which assessment work must be completed from six months to nine months. However, if groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, DEP may authorize an additional six months to complete the monitoring.

The bill also increases the amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from $10 million to $15 million.

Advanced Cleanup

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10.

[43] Chapter 287, F.S., regulates state agency procurement of commodities and services.

The bill also adds a new requirement that an applicant who is not the property owner for any of the sites contained in an application must provide evidence of authorization from the property owners for site access and rehabilitation tasks consistent with the proposed course of action.

The bill increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million.

B. SECTION DIRECTORY:

Section 1. amends s. 376.3071, F.S., relating to the Inland Protection Trust Fund.

Section 2. amends s. 376.30713, F.S., relating to Advanced cleanup.

Section 3. provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on DEP as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for Advanced Cleanup from 20 to 10. According to DEP, the process of bundling sites and implementing cleanups under a performance-based contract has resulted in an average cost savings ranging between 25 percent and 40 percent. The decrease in the number of sites needed for a bundle in conjunction with raising the amount of funds available may result in pushing the average cost savings closer to 25 percent.[44]

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and LRSI.

D. FISCAL COMMENTS:

The bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI contracts from $10 million to $15 million and increases the annual allocation for Advanced Cleanup contracts from $15 million to $25 million. However, these changes do not increase DEP's

[44] DEP, 2015 Agency Legislative Bill Analysis for SB 314.

overall annual appropriation for the Restoration Program, but rather revise how much of the annual appropriation may be expended on these programs within the Restoration Program.

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:

The bill may require DEP to update its rules relating to the LRSI and Advanced Cleanup programs to reflect the new requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to Petroleum Restoration Program; amending s. 376.3071, F.S.; providing conditions for eligibility and methods for payment of costs for the low-risk site initiative; amending s. 376.30713, F.S.; revising the number of sites for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; providing an effective date.

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

Section 1. Paragraph (b) of subsection (12) of section 376.3071, Florida Statutes, are amended, and paragraph (c) is added to subsection (12) of that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(12) SITE CLEANUP.—

(b) ~~*Low-scored*~~ *Low-risk site initiative.*—Notwithstanding subsections (5) and (6), a site ~~with a priority ranking score of 29 points or less~~ may voluntarily participate in the low-risk ~~low-scored~~ site initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the ~~low-scored~~ low-risk site initiative, the ~~responsible party or~~ property owner, or a responsible party that provides evidence of authorization from

the property owners, must submit a "No Further Action Proposal" and affirmatively demonstrate that the ~~following~~ conditions of paragraph (c) are met.~~:~~

~~a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.~~

~~b. Excessively contaminated soil, as defined by department rule, does not exist onsite as a result of a release of petroleum products.~~

~~c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.~~

~~d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.~~

~~e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.~~

~~f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.~~

2. Upon affirmative demonstration that ~~of~~ the conditions of paragraph (c) are met ~~under subparagraph 1.~~, the department shall issue a site rehabilitation completion order incorporating a ~~determination of~~ "No Further Action Proposal." ~~Such~~

~~determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment.~~ If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of costs for the ~~low-scored~~ low-risk site initiative as follows:

a. A ~~responsible party or~~ property owner, or responsible party that provides evidence of authorization from the property owners, may submit an assessment and limited remediation plan designed to affirmatively demonstrate that the site meets the conditions of paragraph (c) ~~under subparagraph 1~~. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment and limited remediation, including up to 6 months of groundwater monitoring, in one or more task assignments, or modifications thereof, not to exceed a total amount equal to that specified for Category Two pursuant to s. 287.017, ~~$30,000~~ for each site where the department has determined that the assessment and limited remediation, if applicable, will likely result in a determination of "No Further Action". The department may not pay the costs associated with the establishment of institutional or engineering controls, with the exception of the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and

recording fees.

b. In order to ensure that work conducted pursuant to this paragraph is completed in a cost-effective manner, the department shall procure such contractual services pursuant to the provisions of chapter 287 and applicable department rules.

c. ~~b.~~ The assessment and limited remediation work shall be completed no later than 9~~6~~ months after the department authorizes the start of a state-funded low-risk-site initiative task ~~issues its approval~~. If groundwater monitoring is required following the assessment and limited remediation in order to satisfy the conditions of paragraph (c), the department may authorize an additional 6 months to complete the monitoring.

d. ~~e.~~ No more than $15 ~~$10~~ million for the ~~low-scored~~ low-risk site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each ~~responsible party or~~ property owner or for each responsible party that provides evidence of authorization from the property owners.

e. ~~d.~~ Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(c) The department shall issue a site rehabilitation completion order incorporating the "No Further Action Proposal" if the department determines that a property owner, or a responsible party that provided evidence of authorization from

the property owners, who submitted a "No Further Action Proposal" affirmatively demonstrated that the following conditions are met:

1. Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

2. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

3. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

4. The area of groundwater containing the petroleum products' chemicals of concern is confined to the source property boundaries of the real property on which the discharge originated, or has migrated from the source property only to a transportation facility of the Florida Department of Transportation.

5. The groundwater contamination containing the petroleum products chemicals of concern is not a threat to any permitted potable water supply well.

6. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established pursuant to s.

376.3071(5)(b)9., or human exposure is limited by appropriate institutional or engineering controls.

Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the department determines that a discharge for which a site rehabilitation completion order was issued pursuant to this subsection may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise be applicable under this section.

Section 2. Subsection (2) and paragraph (a) of subsection (2), and subsection (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites~~, before funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a),~~ pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30

shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 ~~20~~ or more sites may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency ~~term~~ contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency ~~term~~ contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

5. Where the applicant is not the property owner for any of the sites contained in the application, evidence of

authorization from the property owners for site access and petroleum site rehabilitation program tasks consistent with the proposed course of action.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their

individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to this paragraph.

(4) The department may enter into contracts for a total of up to $25 ~~$15~~ million of advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 787 Recycled and Recovered Materials
SPONSOR(S): Peters
TIED BILLS: None **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Gregory	Blalock AFB
2) Civil Justice Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources. The Legislature declared that the maximum recycling and reuse of resources are considered high-priority goals of the state. In 2013, 11,845,600 tons of municipal solid waste was recycled in Florida.

Under current law, the following persons can be held liable for all costs of removal or remedial action incurred by the Department of Environmental Protection (DEP) and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance:

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

These persons may only use the defenses available in the statutes. To avoid liability persons must plead and prove the occurrence was solely the result of:

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

The bill:

- Adds an additional defense to liability for a person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of recycling or reuse of such material. Such person would be relieved of liability for solid waste that is released or threatened to be released at the receiving facility.
- Creates an exception or limitation to the relief from liability if the person arranging for the transfer of the recycled material fails to exercise reasonable care with respect to the management and handling of the material, or if the recycling of such materials was not expected to be "legitimate" based on the information generally available to the person at the time of the arrangement.
- Defines "recycled and recovered materials" to include scrap paper; scrap plastic; scrap glass; scrap textiles; scrap rubber, other than whole tires; scrap metal; or spent lead-acid or nickel-cadmium batteries or other spent batteries.
- States that the newly created defense applies to causes of action accruing on or after July 1, 2015 and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

The bill may have a negative fiscal impact on DEP because there is a potential that if there were a release of solid waste and a viable responsible party successfully claims the newly created liability defense, the state may incur the associated cleanup costs if no other viable responsible party exists.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Recycled and Recovered Materials

Economically recovering material and energy resources from solid waste can eliminate unnecessary waste and slow the depletion of natural resources.[1] The Legislature declared that the maximum recycling and reuse of resources are considered high-priority goals of the state.[2] In 2013, 11,845,600 tons of municipal solid waste was recycled in Florida.[3]

Recovering and recycling scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries not only eliminate unnecessary waste and slow the depletion of natural resources, but may also be economically beneficial.[4] There are approximately 186 recovered materials dealers in Florida.[5] However, these activities may be discouraged and impeded as an unintended consequence of the hazardous substance liability provisions of Florida law.

Contamination Liability and Defenses – State

A "hazardous substance" is a substance, element, compound, mixture, solution, hazardous waste, or toxic pollutant listed by the Environmental Protection Agency (EPA) which, when released into the environment may present substantial danger to the public health or welfare or the environment.[6] Under ss. 376.308(1)(b) and 403.707(4), F.S., the following persons can be held liable for all costs of removal or remedial action incurred by the Department of Environmental Protection (DEP) and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance:

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

DEP does not need to plead or prove negligence in any form or matter in these cases.[7] DEP must only plead and prove that the prohibited discharge or other polluting condition occurred.[8] Thus, this is a strict liability statute. Even though a person may not make critical decisions as to how, when, and by whom a hazardous substance is disposed of, a person may be held liable for cleanup costs if there is

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[1] Section 403.7032(1), F.S.
[2] Id.
[3] Florida Department of Environmental Protection, *Florida Municipal Solid Waste Collected and Recycled (2013)*, http://www.dep.state.fl.us/waste/categories/recycling/SWreportdata/13_data.htm (last visited March 18, 2015).
[4] Presentation by Florida Recycling Partnership, Agriculture and Natural Resources Subcommittee, March 3, 2015, available at http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2852.
[5] Florida Department of Environmental Protection, *Recycling Business Assistance Center*, http://www.dep.state.fl.us/waste/rbac/pages/directory.htm (last visited March 18, 2015).
[6] Sections 376.301(20) and 403.703(12), F.S. citing 42 U.S.C. § 9601(14); 42 U.S.C. § 9602(a).
[7] Section 376.308(1), F.S.
[8] Id.; Aramark v. Easton 894 So.2d 20, 26 (Fla. 2004)

evidence the person was the party responsible for "otherwise arranging" for disposal of hazardous substance.[9]

Whenever two or more persons release a hazardous substance and the damage is indivisible, those persons may be held jointly and severally liable.[10] Joint and several liability is liability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion.[11] Thus, each liable party is individually responsible for the entire obligation.[12] A paying party may have a right of contribution and indemnity from nonpaying parties.[13] However, if damage from the release of hazardous substances is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his or her violation.[14]

Persons potentially liable for a discharge, polluting condition, or release may only use the defenses set forth in the statutes.[15] To avoid liability persons must plead and prove the occurrence was solely the result of:

- An act of war;
- An act of government;
- An act of God[16]; or
- An act or omission of a third party.[17]

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

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

These requirements are imposed on owners of contaminated sites because they are in the best position to protect themselves from the indemnities of the seller through pre-purchase due diligence and negotiation.[18]

In addition to these defenses, in the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility may escape liability by demonstrating that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title.[19] Under this "innocent landowner defense," the defendant must prove by a preponderance of the evidence that that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability.[20] When considering whether to apply the innocent landowner defense, a judge must take into account:

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[9] Florida Power & Light Co. v. Allis Chalmers Corp. et al., 893 F.2d 1313, 1318 (11th Cir. 1990).
[10] Section 403.141(2), F.S.
[11] Black's Law Dictionary 926 (7th ed. 1999).
[12] Id.
[13] Id.; Section 403.727(8), F.S.
[14] Section 403.141(2), F.S.
[15] Sections 376.308(1) and 403.727(4), F.S.; Aramark, 894 So.2d at 24.
[16] An "act of God" is an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. 42 U.S.C. § 9601(1).
[17] Sections 376.308(2) and 403.727(5), F.S.
[18] Aramark Uniform and Career Apparel, Inc., et al. vs. Easton, 894 So.2d 20, 25 (Fla. 2004)
[19] Section 376.308(1)(c), F.S.; Under federal law, this defenses applies to all releases of hazardous substances. 42 U.S.C. § 9601(35)(B)(i).
[20] Id.

- Any specialized knowledge or experience on the part of the defendant;
- The relationship of the purchase price to the value of the property if uncontaminated;
- Commonly known or reasonably ascertainable information about the property;
- The obviousness of the presence or likely presence of contamination at the property; and
- The ability to detect such contamination by appropriate inspection.[21]

Contamination Liability and Defenses – Federal

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly referred to as Superfund, to directly respond to releases or threatened releases of hazardous substances that may endanger public health or the environment.[22] CERCLA provides for liability of persons responsible for releases of hazardous substances.[23]

CERCLA and Florida's contamination liability statutes have very similar provisions regarding the liability and available defenses to liability for the release of hazardous substances that may contaminate surface or ground waters of the state.[24] When the Legislature models legislation upon federal law, courts gives the Florida legislation the same construction as the federal courts give the federal legislation.[25] Thus, courts have interpreted Florida's contamination liability statutes in the same manner as the federal law.[26]

Notably, Florida law does not contain ones of the defenses found in CERCLA. The Superfund Recycling Equity Act (SREA), 42 U.S.C. § 9627, exempts certain persons who "arranged for recycling of recyclable materials" from CERCLA liability. This defense only applies to persons who:

- By contract, arranged for the disposal of a hazardous substance; or
- Accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites.[27]

The federal defense does not affect the CERCLA liability of an owner or operator for a release of a hazardous substance on their site.[28]

Congress created the defense to:

- Promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;
- Create greater equity in the statutory treatment of recycled versus virgin materials; and
- Remove the disincentives and impediments to recycling created as an unintended consequence of the Superfund liability provisions.[29]

Arrangers and transporters of recyclable material may not use the defense if they fail to meet the listed criteria:[30]

- The items must be a "recyclable material" which is scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or

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[21] Id.
[22] Environmental Protection Agency, *Land and Cleanup*, http://www2.epa.gov/regulatory-information-topic/land-and-cleanup#superfund (last visited March 18, 2015).
[23] 42 U.S.C. § 9607.
[24] Department of Environmental Protection v. Allied Scrap Processors, Inc., 724 So.2d 151, 152 (Fla. 1998).
[25] Id.
[26] Id.
[27] 42 U.S.C. § 9627(a)(1).
[28] 42 U.S.C. § 9627(g).
[29] S. 1948, § 6001(a), Pub. L. No. 106-113, 113 Stat. 1536, 1537.
[30] 42 U.S.C. § 9627(a)(2).

adhering to the scrap material as a result of its normal and customary use prior to becoming scrap. "Recyclable material" does not include:
    - Shipping containers of a capacity from 30 liters to 3,000 liters; or
    - Any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million;
- Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) are deemed to be "arranging for recycling" if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:
    - The recyclable material met a commercial specification grade;
    - A market existed for the recyclable material;
    - A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product;
    - The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material; and
    - The person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter referred to as a "consuming facility") was in compliance with substantive provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material. Whether a person exercised "reasonable care" is determined by:
        - The price paid in the recycling transaction;
        - The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and
        - The result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.
- Transactions involving scrap metal[31] are be deemed to be "arranging for recycling" if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction:
    - The person met the criteria set forth for transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber section (above) in respect to the scrap metal;
    - The person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal; and
    - The person did not melt the scrap metal prior to the transaction.
- Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries are be deemed to be "arranging for recycling" if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable

[31] "Scrap Metals" are bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals excluded from this definition by federal regulation. 42 U.S.C. § 9627(d)(3).

material) can demonstrate by a preponderance of the evidence that at the time of the transaction;

- The person met the criteria set forth for transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber section (above) in respect to the spent batteries; and
- The person was in compliance with applicable Federal environmental regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of spent batteries.[32]

The exclusions from liability does not apply if the person had an objectively reasonable basis to believe at the time of the recycling transaction:

- That the recyclable material would not be recycled;
- That the recyclable material would be burned as fuel, or for energy recovery or incineration; or
- That the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material.[33]

Persons seeking the exemption from CERCLA liability under the SREA defense, must prove they meet the criteria.[34]

Effect of the Proposed Changes

The bill amends s. 403.727, F.S., to provide that persons that sell, transfer or arrange for the transfer of recycled materials to a facility owned and operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of such materials is relieved from liability for solid waste released or threatened to be released from the receiving facility.

A person would not be able to use the defense in the bill if the person arranging for the transfer of the recycled material fails to exercise reasonable care with respect to the management and handling of the material, or if the recycling of such materials was not expected to be "legitimate" based on the information generally available to the person at the time of the arrangement.

The bill defines "recycled and recovered materials" as scrap paper; scrap plastic; scrap glass; scrap textiles; scrap rubber, other than whole tires; scrap metal; or spent lead-acid or nickel-cadmium batteries or other spent batteries. The term also includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste.

Lastly, the bill states that the defense applies to causes of action accruing on or after July 1, 2015 and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.727, F.S., relating to violations, defenses, penalties, and remedies.

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

[32] 42 U.S.C. § 9627(b)-(e).
[33] 42 U.S.C. § 9627(f).
[34] Gould Inc. v. A&M Battery & Tire Service, 176 F.Supp.2d 324, 327 (M.D. Penn. 2001).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a potential negative fiscal impact on DEP because if there is a release of solid waste and a viable responsible party successfully claims the newly created liability defense, the state may incur the associated cleanup costs if no other viable responsible party exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may remove potential impediments to recycling in Florida by providing an extra defense to liability for the release or threatened release of solid waste.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comparison to Federal Recycling Defense

The proposed defense is similar to the SREA defense available under federal law. However, the proposed defense appears to only apply to persons that sell, transfer or arrange for the transfer of recycled materials to another facility. By the use of different terms, the proposed defense does not appear to apply to potentially liable persons under Florida's contamination liability statutes who

"arrange for disposal" or "who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites" like the SREA defense.

Further, the federal law is more detailed in describing what a person must demonstrate in order to avail themselves of the liability defense. For instance, to qualify for the federal defense, a person that arranged for recycling is specifically required to show that they took reasonable care to determine the environmental compliance status of the facility to which the recyclable material was sent.[35] While not as specific, the defense proposed in the bill would also consider whether reasonable care was provided in the handling and management of the recycled and recovered materials, and whether the recycling was expected to be legitimate.

The federal SREA defense is also specific to releases of "hazardous substances," not "solid waste" that is released or threatened to be released. Further, the liability assigned in Florida's contamination liability statutes applies to "hazardous substances," not "solid waste."[36] "Solid waste," "hazardous waste," and "hazardous substance" have distinct meaning.

- "Solid waste" is sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.[37]
- "Recovered materials" are not solid waste.[38] "Recovered materials" are metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal.[39]
- "Hazardous waste" is solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.[40]
- A "hazardous substance" is a substance, element, compound, mixture, solution, hazardous waste, or toxic pollutant listed by the Environmental Protection Agency which, when released into the environment may present substantial danger to the public health or welfare or the environment.[41]

A "hazardous substance" is not necessarily a "solid waste." If a "hazardous substance" becomes "solid waste," it is "hazardous waste" and must be properly transported, disposed of, stored, treated, or otherwise managed. Thus, it is unclear if the proposed defense would relieve liability under Florida's contamination liability statutes because the liability applies to "hazardous substances" while the proposed defense in the bill applies to "solid waste." The bill sponsor plans to file an amendment to rectify this issue in the bill.

The definition of the term "recycled and recovered materials" provided in the bill is also similar to the definition in the federal law under SREA, 42 U.S.C. § 9627(b). However, the definition in the bill includes the phrase "[t]he term does not include hazardous waste." It is unclear what this phrase adds

[35] 42 U.S.C. § 9627(b)-(e).
[36] Sections 376.308(1)(b) and 403.707(4), F.S.
[37] Section 403.702(32), F.S.
[38] Sections 403.702(24) and (32), F.S.
[39] Section 403.702(24), F.S.
[40] Section 403.702(13), F.S.
[41] Sections 376.301(20) and 403.703(12), F.S. citing 42 U.S.C. § 9601(14); 42 U.S.C. § 9602(a).

to the meaning of "recycled and recovered materials." Further, several of the items listed as "recycled and recovered materials" are also in the definition of "recovered materials," which, as discussed above, are not "solid waste." Thus, the defense may not apply to the items listed as "recycled and recovered materials" because they are not "solid waste."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to recycled and recovered materials; amending s. 403.727, F.S.; exempting a person who sells, transfers, or arranges for the transfer of recycled and recovered materials from liability for solid waste released or threatened to be released from the receiving facility or site, under certain circumstances; defining the term "recycled and recovered materials"; providing retroactive application under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) of section 403.727, Florida Statues, is amended, present subsection (8) of that section is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

403.727 Violations; defenses, penalties, and remedies.—

(4) In addition to any other liability under this chapter, and subject only to the defenses set forth in subsections (5), (6), ~~and~~ (7), and (8):

(a) The owner and operator of a facility;

(b) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;

(c) Any person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person or by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous substances; and

(d) Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

is liable for all costs of removal or remedial action incurred by the department under this section and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510.

(8) In order to promote the reuse and recycling of recovered materials and to remove potential impediments to recycling, notwithstanding ss. 376.308 and 403.727, a person who sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of such materials is relieved from liability for solid

waste released or threatened to be released from the receiving facility. This relief from liability does not apply if the person fails to exercise reasonable care with respect to the management and handling of the recycled and recovered materials, or if the arrangement for reclamation, recycling, manufacturing, or reuse of such materials was not reasonably expected to be legitimate based on information generally available to the person at the time of the arrangement. For the purpose of this subsection, the term "recycled and recovered materials" means scrap paper; scrap plastic; scrap glass; scrap textiles; scrap rubber, other than whole tires; scrap metal; or spent lead-acid or nickel-cadmium batteries or other spent batteries. The term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste. This subsection applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 787 (2015)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Peters offered the following:

Amendment (with title amendment)

Remove lines 52-53 and insert:

or reuse of such materials is relieved from liability for hazardous substances released or threatened to be released from the receiving

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

Remove line 6 and insert:

hazardous substances released or threatened to be released from

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 869 Broward County
SPONSOR(S): Clarke-Reed
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Agriculture & Natural Resources Subcommittee		Hastings CH	Blalock AFB
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The Fish and Wildlife Conservation Commission (FWC), counties, and municipalities may establish "boating-restricted areas," placing limits on vessel speed and volume, for the purpose of protecting public safety. To enforce speed limits in "boating-restricted areas," FWC must place regulatory markers (such as speed limit signs). The New River Canal and the Florida Intracoastal Waterway in Broward County are defined as "boating-restricted areas." Current law directs Broward County to bear the cost of providing speed limit signs and directs that each incorporated area within the county shall bear the cost of erecting any signs to be placed within its corporate boundaries.

The bill repeals current law requiring Broward County to pay for the cost of providing the speed limit signs and requiring each incorporated area within the county to bear the cost of erecting any signs to be placed within its corporate boundaries. Any responsibility for constructing and maintaining signs after the passage of the act would pass to FWC under general law.

Broward County currently spends $30,000 per year on "upgrades" to the speed limit signs. The bill would shift those costs from the county to FWC.

This bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Boating-Restricted Areas

Under the Florida Vessel Safety Law, boating-restricted areas may be established for "any purpose necessary to protect the safety of the public," as long as the restrictions relate to boating accidents, visibility, hazardous currents or waters levels, vessel traffic congestion, or other navigational hazards.[1] Both vessel speed and vessel traffic may be restricted.[2]

A boating-restricted area may be created by the Fish and Wildlife Conservation Commission (FWC) by adopting an administrative rule pursuant to ch. 120, F.S.,[3] or by a county or municipality by adoption of an ordinance.[4] Boating can only be restricted in an area with consultation and coordination with the governing body of the county or municipality where the area is located, and with the Coast Guard and Army Corps of Engineers, where the area is part of the navigable waters of the United States.[5] The current federal definition of navigable waters of the United States includes:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- All other waters, including intrastate waters, that could affect interstate or foreign commerce;
- All tributaries of those waters previously described;
- The territorial sea; and
- Wetlands adjacent to those waters previously described (but are not themselves wetlands).[6]

It is unlawful to operate a vessel in a boating-restricted area or to carry on any prohibited activity[7] if the area has been clearly marked by regulatory markers.[8] Violating the Florida Vessel Safety Law is a noncriminal infraction,[9] and violators are subject to a $50 fine.[10] The restriction and penalties do not apply in the case of an emergency, or to any law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.[11]

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[1] s. 327.46(1), F.S.
[2] *Id.*
[3] s. 327.46(1)(a), F.S.
[4] s. 327.46(1)(b)-(c), F.S.
[5] s. 327.46(2), F.S.
[6] 40 C.F.R. §122.2 (2014). The current definition is being amended by a joint EPA and Army Corps. of Engineers informal rulemaking. The rule is in the process of being finalized. *See* Definition of "Waters of the United States" Under the Clean Water Act, 79 Fed. Reg. 22,188 (proposed Apr. 21, 2014) (to be codified at 33 C.F.R. pt. 328 and scattered parts of 40 C.F.R.). The new definition would likely expand jurisdiction by approximately 3%. CLAUDIA COPELAND, CONG. RESEARCH SERV., R43455, EPA AND THE ARMY CORPS' PROPOSED RULE TO DEFINE "WATERS OF THE UNITED STATES" (2015).
[7] "Prohibited activity" is defined for the purposes of ch. 327 as an "activity that will impede or disturb navigation or creates a safety hazard on waterways of this state." s. 327.02(35), F.S.
[8] s. 327.46(3), F.S.
[9] s. 327.73(1)(k), F.S.
[10] s. 327.73(1), F.S.
[11] s. 327.46(4), F.S.

The ability to enforce regulations in boating-restricted areas is dependent upon the placement of regulatory markers.[12] FWC is required to adopt rules establishing a uniform system of regulatory markers compatible with Coast Guard regulations.[13] Counties and municipalities which have been granted a boating-restricted area designation for a portion of the Florida Intracoastal Waterway may apply to FWC for permission to place regulatory markers under the procedures of s. 327.40, F.S.[14]

Boating-Restricted Areas in Broward County

Chapter 86-364, Laws of Florida, establishes a speed limit of thirty miles per hour for vessels travelling on the New River Canal and Florida Intracoastal Waterway.[15] Boaters are informed of the speed limit by signs at locations designated by Florida Marine Patrol.[16] Broward County is responsible for the cost of erecting and maintaining the signs in unincorporated areas, while municipalities are responsible for these costs for any sign inside their boundaries.[17] The speed limit set by the act does not apply in regulatory zones, idle speed/no wake zones, and manatee zones.[18]

Boating restrictions are enforced by FWC and the Florida Department of Law Enforcement.[19] FWC has also adopted a rule concerning "Broward County Boating Restricted Areas."[20] An earlier version of this rule specifically authorized Broward County to install and maintain regulatory markers, as directed by the Division of Law Enforcement, within boating-restricted areas.[21] This authorization was removed with the intention of shifting authority and responsibility for managing regulatory markers along the Florida Intracoastal Waterway from Broward County and the City of Fort Lauderdale to FWC.[22]

Effect of Proposed Changes

The bill transfers authority for the construction and maintenance of speed limit signs along the New River Canal and Florida Intracoastal Waterway in Broward County from the county to FWC.

The bill also removes a provision stating the speed limits set by ch. 86-364, s. 1, Laws of Florida, do not apply in regulatory zones, idle speed/no wake zones, and manatee zones.

Broward County has previously spent money erecting speed limit signs in the New River Canal and Florida Intracoastal Waterway.[23] Most of these signs are still in good condition and the county currently spends approximately $30,000 a year for upgrades as part of its Parks and Recreation budget.[24] FWC maintains ninety percent of the markers for manatee protection.[25]

B. SECTION DIRECTORY:

Section 1: Repeals s. 2, Ch. 86-364, Laws of Florida, concerning speed limit signs on the New River Canal and Florida Intracoastal Waterway, Broward County.

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[12] *See* s. 327.46(3), F.S.
[13] s. 327.41(1), F.S.
[14] s. 327.41(2), F.S.
[15] Ch. 86-364, s. 1, Laws of Fla.
[16] Ch. 86-364, s. 2, Laws of Fla. The Florida Marine Patrol's functions are now part of FWC's Division of Law Enforcement.
[17] *Id.*
[18] *Id.*
[19] s. 327.70(1), F.S.
[20] Rule 68D-24.008, F.A.C. (effective 7/21/13).
[21] Rule 68D-24.008(3), F.A.C. (effective 12/18/94).
[22] Letter from Major Richard Moore, Boating and Waterways Section Leader, FWC, to Barbara Sharief, Mayor of Broward County, Re: Broward County Special Acts of Local Application Numbers 86-364 and 89-428, dated 2/10/14. A copy of this letter is on file with the House Local Government Affairs Subcommittee.
[23] Economic Impact Statement for HB 869 (2015).
[24] *Id.*
[25] *Id.*

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 28, 2014.

WHERE? The Sun-Sentinel, a daily newspaper published in Broward, Palm Beach, and Miami-Dade County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to Broward County; repealing s. 2, chapter 86-364, Laws of Florida, relating to the authority of the Florida Marine Patrol to designate the location of speed limit signs on the New River Canal and Florida Intracoastal Waterway in Broward County, a requirement that the county and incorporated areas within the county bear the cost of erecting the signs, and the nonapplicability of certain speed limit requirements in regulatory zones, idle speed/no wake zones, and manatee areas; providing an effective date.

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

Section 1. Section 2 of chapter 86-364, Laws of Florida, is repealed.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 869 (2015)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Clarke-Reed offered the following:

Amendment (with title amendment)

Between lines 14 and 15, insert:

Section 1. Subsection (8) of section 1 of chapter 86-364, Laws of Florida, as amended by chapter 89-428, Laws of Florida, is amended to read:

Section 1. (8) An alleged violator of this section shall be issued a uniform boating citation, as provided in section 327.74, Florida Statutes. A finding of guilt for the violation of any provision of this section, irrespective of the withholding of adjudication or sentence, shall be considered as a conviction for a violation of chapter 327, Florida Statutes, and the provisions of section 327.731, Florida Statutes, shall apply. The courts shall forward one-half of all moneys received

as fines or civil penalties for violations of this chapter to the State Treasurer for deposit to the Motorboat Revolving Trust Fund. The speed limit provisions of this section do not apply to regulatory zones, idle speed/no wake zones, slow speed minimum wake zones, or manatee protection zones.

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

Remove lines 2-3 and insert:

An act relating to Broward County; amending chapter 86-364, Laws of Florida, as amended; exempting certain zones from specified vessel speed limit provisions; repealing s. 2, relating to the