State Resources Council

Friday, April 21, 2006
3:30 PM
Reed Hall

REVISED

Allan G. Bense
Speaker

Marty Bowen
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 4/20/2006 6:16:52PM)

Amended(1)

State Resources Council

Start Date and Time:	Friday, April 21, 2006 03:30 pm
End Date and Time:	Friday, April 21, 2006 05:00 pm
Location:	Reed Hall (102 HOB)
Duration:	1.50 hrs

Consideration of the following bill(s):

HB 229 CS Exploration, Production, and Storage of Petroleum and Natural Gas by Clarke
HB 471 CS Fish and Wildlife by Troutman
HB 507 CS Exemptions from the Tax on Sales, Use, and Other Transactions by Kreegel
HB 733 CS Airboats by Dean
HB 1039 CS Miami-Dade County Lake Belt Area by Garcia
HB 1347 CS Land Management by Williams
HB 1359 CS Hazard Mitigation for Coastal Redevelopment by Benson
HB 7075 CS Department of Agriculture and Consumer Services by Agriculture Committee
HB 7131 Redevelopment of Brownfields by Environmental Regulation Committee

NOTICE FINALIZED on 04/20/2006 18:16 by REARDON.BILLIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 CS Use of Land for the Exploration, Production, and Storage of Petroleum and Natural Gas
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:** SB 2708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	11 Y, 0 N, w/CS	Lotspeich	Lotspeich
2) Environmental Regulation Committee	7 Y, 0 N	Perkins	Kliner
3) Agriculture & Environment Appropriations Committee	8 Y, 3 N	Dixon	Dixon
4) State Resources Council		Lotspeich	Hamby
5)			

SUMMARY ANALYSIS

The bill directs the Department of Environmental Protection (DEP) to contract for a study relating to risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities.

The bill also directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

The DEP is authorized to use up to $250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Offshore Drilling for Oil and Natural Gas

The Outer Continental Shelf

The Outer Continental Shelf (OCS) consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the States' jurisdiction and the seaward extent of Federal jurisdiction. The continental shelf is the gently sloping undersea plain between a continent and the deep ocean. The United States OCS has been divided into four leasing regions. They are the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaska OCS Region. In 1953, Congress designated the Secretary of the Department of Interior to administer mineral exploration and development of the entire OCS through the Outer Continental Shelf Lands Act (OCSLA). The OCSLA was amended in 1978 directing the secretary to:[1]

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- meet the energy needs of the country;
- protect the human, marine, and coastal environments; and
- receive a fair and equitable return on the resources of the OCS.

State jurisdiction over the OCS is defined as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (approximately 9 nautical miles) seaward from the shoreline.
- Louisiana is extended 3 imperial nautical miles (imperial nautical mile = 6080.2 feet) seaward from the shoreline.
- All other States' seaward limits are extended 3 nautical miles (approximately 3.3 statute miles) seaward from the shoreline.

Federal jurisdiction over the OCS is defined under accepted principles of international law. The seaward limit is defined as the farthest of 200 nautical miles seaward of the shoreline or, if the continental shelf can be shown to exceed 200 nautical miles, a distance not greater than a line 100 nautical miles from the 2,500-meter isobath or a line 350 nautical miles from the shoreline.[2]

The OCS is a significant source of oil and gas for the nation's energy supply. The OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil and gas resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS.[3]

The OCS Lands Act requires the Department of Interior (DOI) to prepare a 5-year program that specifies the size, timing and location of areas to be assessed for Federal offshore natural gas and oil

[1] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html
[2] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html
[3] http://www.mms.gov/offshore/

leasing. It is the role of DOI to ensure that the U.S. government receives fair market value for acreage made available for leasing and that any oil and gas activities conserve resources, operate safely, and take maximum steps to protect the environment. OCS oil and gas lease sales are held on an area-wide basis with annual sales in the Central and Western Gulf of Mexico with less frequent sales held in the Eastern Gulf of Mexico and offshore Alaska. The program operates along all the coasts of the United States - with oil and gas production occurring on the Gulf of Mexico, Pacific, and Alaska and OCS.[4]

The Minerals Management Service

The Minerals Management Service (MMS), a bureau in the DOI, is the federal agency that manages the nation's natural gas, oil and other mineral resources on the OCS. The MMS also collects, accounts for and disburses more than $8 billion per year in revenues from federal offshore mineral leases. The MMS oversees two major programs: Offshore Minerals and Minerals Revenue Management. The Offshore Minerals program, which manages the mineral resources on the OCS, comprises three regions: Alaska, the Pacific, and the Gulf of Mexico.[5]
The Gulf of Mexico OCS Region is made up of three planning areas along the Gulf Coast - the Western, Central, and Eastern Gulf of Mexico Planning Areas. These areas contain 43 million acres under lease. There are 3,911 offshore production platforms active in the search for natural gas and oil on the Gulf OCS. These production facilities contribute significantly to the nation's energy supply.[6]

Eastern Gulf of Mexico Planning Area[7]

The Eastern Gulf of Mexico Planning Area extends along the Gulf's northeastern coast for some 700 miles, from Baldwin County, Alabama, southward to the Florida Keys. The area encompasses approximately 76 million acres, with water depths ranging from approximately 30 feet to nearly 10,000 feet. The area extends for more than 300 miles seaward of the state/federal boundary (9 miles off the Florida coast).

Since the late 1980's, a limited amount of OCS activity has taken place in the Eastern Gulf of Mexico Planning Area because of administrative deferrals and annual congressional moratoria.

The MMS has estimated that between 6.95 and 9.22 trillion cubic feet of natural gas and 1.57 and 2.78 billion barrels of oil and condensate are contained in the Eastern Gulf of Mexico Planning Area. Drilling for natural gas and oil has been occurring in the Eastern Gulf of Mexico offshore Alabama and Florida for more than three decades. The first of 11 natural gas and oil lease sales held offshore Florida occurred in 1959 and resulted in the issuance of 23 leases. Additional lease sales have been held periodically in the Eastern Gulf from 1973 through 2003. Currently, there are 241 active leases in the Eastern Gulf of Mexico Planning Area.

Exploratory drilling started in the Eastern Gulf of Mexico in the mid-1970's with the drilling of Destin Dome Block 162, located 40 miles south of Panama City, Florida. After two years of drilling and 15 dry holes, exploration stopped. To date, over 54 exploratory wells have been drilled in the Eastern Gulf of Mexico. Thirteen wells discovered natural gas, condensate, and crude oil.

Three Eastern Gulf lease sales were made in the 1980's and there was renewed industry interest in the Destin Dome area. In the late 1980's, Chevron U.S.A. and Gulfstar made natural gas discoveries in the area.

In October 1995, 73 oil and gas leases located *south* of 26° N. latitude (the approximate latitude of Naples, Florida) were returned to the federal government as part of a litigation settlement. Consequently, no active Federal natural gas and oil leases exist off southwest Florida. Likewise, no

[4] http://www.mms.gov/offshore/
[5] http://www.mms.gov/aboutmms/
[6] http://www.gomr.mms.gov/homepg/offshore/gulfocs/gulfocs.html
[7] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html

active leases exist in the Straits of Florida Planning Area or off Florida's east coast (South Atlantic Planning Area).

In 1996, a development plan was filed by Chevron U.S.A. and partners on the Destin Dome 56 Unit. On July 24, 2000, Chevron U.S.A. and partners filed a lawsuit against the U.S. government for denying the companies "timely and fair review" of plans and permits relating to the Destin Dome 56 Unit. In May 2002, the Department agreed to settle the litigation with the oil companies. The companies -- Chevron, Conoco and Murphy Oil -- relinquished seven of nine leases in the unit that were the subject of the litigation in exchange for $115 million. The remaining two leases, Destin Dome Blocks 56 and 57, are to be held by Murphy and will be suspended until at least 2012, under the terms of the agreement. Murphy agreed not to submit a development plan on the two remaining leases before 2012, the year when the current moratoria will expire. Under the terms of the agreement, the leases can not be developed unless approved by both the federal government and the State of Florida.

Unocal began the first production in the Eastern Gulf Planning Area in mid-February 1999 on Pensacola Block 881. Located approximately 12 miles offshore Alabama, this site involves the production of some 5 million cubic feet of natural gas per day.

In October 1999, Gulfstream Natural Gas Systems (ANR) and Buccaneer Gas Pipeline Company (Transco/Williams) submitted pipeline right-of-way applications to the MMS for the construction of two 400-mile (36-inch) natural gas pipelines spanning the Eastern Gulf of Mexico. The Gulfstream right-of-way was approved by MMS on June 1, 2001. This line went into service in June 2002.

In November 1996, DOI released the OCS Oil and Gas Leasing Program (1997-2002). The program included 16 lease sales, with one sale proposed for the Eastern Gulf of Mexico in 2001. The original sale area was reviewed to be consistent with the State of Florida's opposition to offshore oil and gas activities within 100 miles of its coast. The first steps in the 3-year planning process began on January 25, 1999, with the release of the Call for Interest and Information and the Notice of Intent to Prepare an Environmental Impact Statement. A draft environmental impact statement was released in December 2000 and a final EIS was made available to the public in July 2001.

In July 2001, Sale 181 was adjusted from 5.9 million acres to about 1.5 million acres or 256 blocks. The adjusted area lies more than 100 miles off the Alabama/Florida State line. Twenty-three blocks in this area were under lease at that time. Lease Sale 181 was held on December 5, 2001. MMS awarded leases on 95 tracts involving $340,474,113. Seventeen companies participated in this sale.

On December 10, 2003, Eastern Gulf of Mexico Sale 189 was held. Six companies participated in the lease sale that offered 138 blocks comprising approximately 794,880 acres offshore Alabama. The highest bid received was $2.2 million, submitted by Shell and Nexen.

In an August 22, 2005, DOI news release, it was announced that the MMS is seeking initial public comment on the development of its 2007-2012 five-year leasing plan for energy development on the OCS and accompanying environmental impact statement.[8] This includes the Eastern Gulf of Mexico Planning Area. The announcement stated:

> "The announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment not only on energy development but also on other economic and environmental issues in the OCS areas.
>
> 'The OCS contains billions of barrels of oil and trillions of cubic feet of natural gas that can be safely produced,' Interior Secretary Gale Norton said. 'With our reliance on imports of foreign oil climbing each year, we would be irresponsible if we did not consider how we might develop these abundant domestic resources.'

[8] http://www.doi.gov/news/05_News_Releases/050822.htm

Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development.

The Bush Administration has repeatedly expressed its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

However, recent energy legislation passed by Congress calls for a comprehensive inventory and analysis of the oil and natural gas resources for all areas of the OCS.

Therefore, as MMS undertakes the process of drafting its proposal, the agency is seeking comment on the potential resources available in all areas of the OCS, recognizing that many of these areas are subject to existing moratoria and will not be fully analyzed for possible leasing. In seeking public comment, Secretary Norton reaffirmed the Bush Administration's pledge not to conduct any new leasing under the 2007-2012 five-year plan within 100 miles of Florida's coast, in the Eastern Gulf of Mexico Planning Area. MMS is also asking the public to comment specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS; and whether the Interior Department should work with Congress to develop gas-only leases.

The 2007-2012 OCS oil and gas leasing program will be the seventh program prepared since Congress passed the OCS Lands Act in 1978. The Act requires the Secretary of the Interior to prepare and maintain five-year programs for offshore oil and natural gas leasing. The current program runs through June 30, 2007.

Once public comment is received, MMS will develop a draft proposed program followed by a proposed program and draft EIS. The public will have an opportunity to comment on both documents.

The following is the schedule for the 2007-2012 five-year program:"

Date	Step
August 24, 2005	Solicit comments and information (Federal Register Notice)
Winter 2005	Issue draft proposed program (60-day comment period)
Summer 2006	Issue proposed program and draft EIS (90-day comment period)
Winter 2007	Issue proposed final program and final EIS (60-day waiting period)
Spring 2007	Approve five-year program for July 2007-July 2012

The Exploration and Development Process

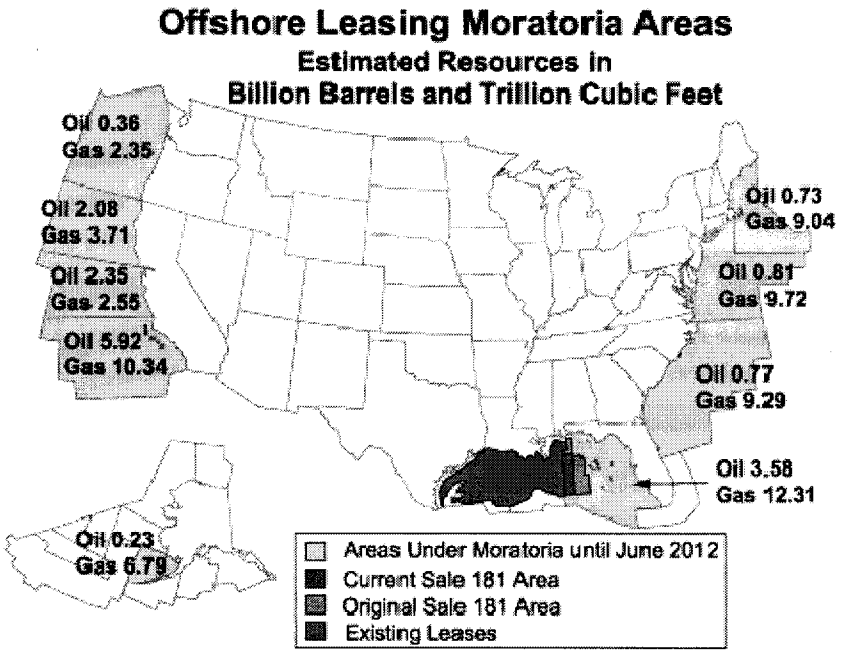
Once a company acquires a lease, the company has to prepare an exploration plan and have it approved by MMS and other federal and state agencies in order to drill a well. Typical exploration plans propose the drilling of one or more exploratory wells. The MMS conducts an environmental review of the impacts of drilling the well. Should a discovery be made, the company may then prepare and file a development plan. The exploration and development plans must be consistent with the affected state's Coastal Zone Management Plan

During exploratory drilling or production operations on the OCS, the MMS inspection program calls for MMS inspectors to review operations and periodically visit and inspect facilities to ensure clean and environmentally safe operations.

To prepare for lease sales and to protect the environment during offshore drilling operations, MMS conducts environmental studies. Several new studies are planned and/or currently underway.[9]

Federal Moratoria

Congress and past Presidents have placed moratoria on offshore drilling and development on the OCS on both the U.S. East and West Coasts. Included in the moratoria is the Eastern Gulf of Mexico. The consequence of the moratoria is to foreclose until at least 2012 any effort to explore for critical oil and gas resources that are estimated to lie beneath these areas. In response to recent sharp increases in fuel and home heating oil, several attempts have been made in Congress to limit or remove these moratoria. The map below illustrates these moratoria areas.[10]



Note: Locations of existing leases offshore California and in Eastern Gulf of Mexico are approximate and intended to be representative only.

Source: Minerals Management Service

Current State Law

Under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of state-owned submerged lands. These state-owned submerged lands extend waterward from the shoreline for approximately 9 miles into the Gulf of Mexico and 3 miles into Atlantic Ocean.[11] Section 253.61, F.S., expressly prohibits the Trustees from granting any "oil or natural gas *lease*" on state-owned submerged lands off the State's west coast. A similar provision in section 377.24, F.S., prohibits the DEP from issuing a *permit* "to drill a well in search of oil or gas" on the same state-owned submerged lands.

[9] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html
[10] http://api-ep.api.org/issues/index.cfm
[11] Section 1, Article II, Florida Constitution

Onshore Storage of Petroleum Products

There are currently 11 ports along Florida's coast where petroleum products are shipped into the State. Each of these ports has one or more bulk petroleum storage facilities. The largest such facilities are located at Tampa (11 facilities with 162 million gallons of unleaded gasoline and 65 million gallons of diesel), Port Everglades (13 facilities with 147 million gallons of unleaded gasoline and 51.5 million gallons of diesel), Jacksonville (9 facilities with 95.5 million gallons of unleaded gasoline and 53 million gallons of diesel), Pensacola (2 facilities with 13 million gallons of unleaded gasoline and 3 million gallons of diesel), and Cape Canaveral (1 facility with 12.5 million gallons of unleaded gasoline and 5 million gallons of diesel).

Hurricane Katrina caused significant damage to bulk petroleum storage facilities along the Louisiana coast. According to the U.S. Coast Guard, Hurricane Katrina caused 6 major spills (> 100,000 gallons) at such facilities, 4 medium spills (>10,000 gallons), and 134 minor spills (< 10,000 gallons) in Louisiana. The total volume from all spills was approximately 8 million gallons. As of November 5, 2005, 3.5 million gallons had been recovered, 2 million gallons evaporated, and 2 million gallons naturally dispersed, leaving approximately 400,000 gallons to be addressed.[12]

EFFECT OF PROPOSED CHANGES

Aboveground Storage Tanks Study

The bill requires the DEP to contract for a study that evaluates the exposure risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems (tanks, piping, pumps, and related components) at bulk product facilities, as defined in subsection 376.031(3), F.S.

The scope of the study, at a minimum, must include:

- An evaluation of the frequency, strength, and probability estimates for hurricane winds and storm surge on those areas of Florida coasts where existing bulk product facilities are located and where new bulk product facilities are likely to be constructed.
- An evaluation of the need and timing for requirements for the establishment of minimum ballast levels for field-erected aboveground storage tanks at bulk product facilities.
- An evaluation of the need and feasibility for requirements for temporary and permanent anchoring systems.
- An evaluation of the need for potential siting considerations or engineering mitigation that would prevent or limit the installation of new field-erected aboveground storage tank systems at bulk product facilities in areas that are potentially high risk areas for hurricane winds and storm surge.
- Identification of all current and proposed industry standards for professionally engineered dike-fields surrounding field-erected aboveground storage tanks at bulk product facilities.

The study is to include recommendations for changes, if needed, to aboveground storage tank system laws and agency rules in order to decrease damage from hurricanes and improve recovery of field-erected aboveground storage tank systems after storm damage. All recommendations must be accompanied by a cost-benefit analysis which is to include an analysis of:

- The costs for modifying existing field-erected aboveground storage tank systems and dike fields, and the costs associated with new construction of field-erected aboveground storage tank systems and dike fields, to meet any proposed new requirements; and
- The potential adverse effect on petroleum inventory capacity in Florida resulting from any proposed new requirements. All industry segments with field-erected aboveground storage tanks shall be included in the petroleum inventory capacity analysis (e.g. petroleum, electric utility, etc.).

[12] http://www.uscgstormwatch.com/go/doc/1008/87976/

The department is required to report the findings and recommendations of the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2008.

The DEP is authorized to use up to $250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study.

Environmental Impacts from Oil and Natural Gas Drilling in the Eastern Gulf of Mexico

The bill also requires the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

The bill requires the DEP to immediately request from the appropriate state agencies and private research institutes all available data and information needed by DEP to complete the evaluation. The appropriate state agencies must submit the data and information to the department at the earliest possible date. Private research institutes that may have such data and information are encouraged to submit relevant data and information to DEP to the maximum extent practicable. The DEP's effort are also to include data and information available through appropriate federal executive branch agencies.

The DEP's evaluation must take into consideration current technologies for controlling discharges from oil and gas exploration rigs and production platforms, and must include, but need not be limited to:

- Evaluating the probability of a discharge from oil and gas exploration rigs and production platforms.
- Evaluating the magnitude of any probable discharge from oil and gas exploration rigs and production platforms.
- Evaluating Gulf of Mexico currents and circulation patterns and the likelihood of any probable discharge reaching Florida's coastal waters and shorelines.
- Evaluating the environmental impacts of any probable discharge on the fish and wildlife resources in Florida's coastal waters.

The DEP is required to present to the Governor, the President of the Senate, and the Speaker of the House of Representatives the results of its evaluation within 120 days after the effective date of the act.

C. SECTION DIRECTORY:

Section 1. Directs the DEP to contract for a study relating to risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities.

Section 2. Provides an appropriation for the study required by Section 1.

Section 3. Directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The DEP is authorized to use up to $250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks as provided for in Section 1 of the bill.

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules by nor alter the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 229. The strike-all amendment makes the following changes to the bill:

- Directs the DEP to contract for a study that evaluates the exposure risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tanks at bulk product facilities.

- Provides that the DEP is authorized to use up to $250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks .
- Directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

This analysis has been revised to reflect the strike-all amendment.

CHAMBER ACTION

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1 The Water & Natural Resources Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the exploration, production, and
8 storage of petroleum and natural gas; directing the
9 Department of Environmental Protection to contract for a
10 study of exposure risks and potential adverse effects of
11 hurricane wind and storm surge on field-erected
12 aboveground storage tank systems at bulk product
13 facilities; providing requirements for the scope of the
14 study; providing an appropriation from the Inland
15 Protection Trust Fund for the cost of the study; directing
16 the department to compile and review existing data and
17 information relating to environmental risks associated
18 with oil and natural gas exploration and production in the
19 eastern Gulf of Mexico; providing requirements and
20 criteria for the evaluation of such risks; requiring the
21 department to submit a report to the Governor and the
22 Legislature; providing an effective date.
23

24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Study of exposure risks and potential adverse
27 effects of hurricane wind and storm surge on field-erected
28 aboveground storage tank systems at bulk product facilities.--
29 (1) The Department of Environmental Protection shall
30 contract for a study to evaluate the exposure risks and
31 potential adverse effects of hurricane wind and storm surge on
32 field-erected aboveground storage tank systems, including tanks,
33 piping, pumps, and related components, at bulk product
34 facilities as defined in s. 376.031(3), Florida Statutes. The
35 study's scope shall include, but need not be limited to:
36 (a) Evaluating the frequency, strength, and probability
37 estimates for hurricane winds and storm surge on the coastal
38 areas of the state where existing bulk product facilities are
39 located and where new bulk product facilities are likely to be
40 constructed.
41 (b) Evaluating the need and timing for requirements for
42 the establishment of minimum ballast levels for field-erected
43 aboveground storage tanks at bulk product facilities based on
44 the frequency, strength, and probability estimates for hurricane
45 winds and storm surge, and based on levels calculated by a
46 professional engineer specific to each individual field-erected
47 aboveground storage tank, taking into account the type of tank,
48 the type of product stored, tank diameter, tank height, and
49 other relevant factors.
50 (c) Evaluating the need and feasibility for requirements
51 for:

52 1. Professionally engineered permanent anchoring systems
53 for field-erected aboveground storage tanks in high-risk surge
54 zones.
55 2. Professionally engineered temporary cable tie-down
56 systems, which could be preconstructed or prefabricated and
57 retained in storage until needed, that would not interfere with
58 normal daily operations and that could be set up in advance of
59 an approaching storm.
60 (d) Evaluating the need for potential siting
61 considerations or engineering mitigation that would prevent or
62 limit the installation of new field-erected aboveground storage
63 tank systems at bulk product facilities in areas that are
64 potentially high-risk areas for hurricane winds and storm surge
65 unless the systems are designed and engineered to withstand
66 hurricane winds and storm surge.
67 (e) Identifying all current and proposed industry
68 standards for professionally engineered dike fields surrounding
69 field-erected aboveground storage tanks at bulk product
70 facilities, including standards for materials and designs that
71 will withstand hurricane winds and storm surges yet allow access
72 for emergency firefighting vehicles in accordance with industry
73 reference standards contained in National Fire Protection
74 Association publication NFPA No. 30.
75 (2) The study shall include recommendations for changes,
76 if needed, to aboveground storage tank system laws and agency
77 rules in order to decrease damage from hurricanes and improve
78 recovery of field-erected aboveground storage tank systems after

79 storm damage. All recommendations shall be accompanied by a
80 cost-benefit analysis, which shall include an analysis of:
81 (a) The costs for modifying existing field-erected
82 aboveground storage tank systems and dike fields, and the costs
83 associated with new construction of field-erected aboveground
84 storage tank systems and dike fields, to meet any proposed new
85 requirements.
86 (b) The potential adverse effect on petroleum inventory
87 capacity in the state resulting from any proposed new
88 requirements. All industry segments with field-erected
89 aboveground storage tanks, including, but not limited to, those
90 used for petroleum and electric utility, shall be included in
91 the petroleum inventory capacity analysis.
92 (3) The department shall report the findings and
93 recommendations of the study to the Governor, the President of
94 the Senate, and the Speaker of the House of Representatives by
95 March 1, 2008.
96 (4) The Department of Environmental Protection is
97 authorized to use up to $250,000 from the Inland Protection
98 Trust Fund for the 2006-2007 and 2007-2008 fiscal years for the
99 cost of the study set forth in this section.
100 Section 2. Compilation and review of existing data and
101 information relating to environmental risks associated with oil
102 and natural gas exploration and production in the eastern Gulf
103 of Mexico.--
104 (1) The Department of Environmental Protection shall
105 compile and review existing data and information to evaluate the
106 environmental risks from all activities associated with the

107 possible future exploration for and production of oil and
108 natural gas in the eastern Gulf of Mexico currently subject to
109 federal moratoria. The department shall immediately request from
110 the appropriate state agencies and private research institutes
111 all available data and information necessary to complete this
112 task. The appropriate state agencies must submit the data and
113 information to the department at the earliest possible date, and
114 private research institutes are encouraged to submit relevant
115 data and information to the maximum extent practicable. The
116 department's effort shall include data and information available
117 through appropriate federal executive branch agencies. To the
118 maximum extent practicable, the department's efforts shall take
119 into consideration current technologies for controlling
120 discharges from oil and gas exploration rigs and production
121 platforms and shall include, but need not be limited to:
122 (a) Evaluating the probability of a discharge from oil and
123 gas exploration rigs and production platforms.
124 (b) Evaluating the magnitude of any probable discharge
125 from oil and gas exploration rigs and production platforms.
126 (c) Evaluating the Gulf of Mexico currents and circulation
127 patterns and the likelihood of any probable discharge's reaching
128 the coastal waters and shorelines of the state.
129 (d) Evaluating the environmental impacts of any probable
130 discharge on the fish and wildlife resources in the coastal
131 waters of the state.
132 (2) The department shall report the findings of the
133 evaluation to the Governor, the President of the Senate, and the

134 Speaker of the House of Representatives within 120 days after
135 the effective date of this act.
136 Section 3. This act shall take effect upon becoming a law.

HB 471 CS

OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 471 CS Fish and Wildlife
SPONSOR(S): Troutman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	7 Y, 0 N, w/CS	Winker	Lotspeich
2) Criminal Justice Committee	6 Y, 0 N, w/CS	Ferguson	Kramer
3) Agriculture & Environment Appropriations Committee	(W/D)		
4) State Resources Council		Winker RW	Hamby
5)			

SUMMARY ANALYSIS

The bill addresses several issues relating to penalties for violations of statutes and rules of the Fish and Wildlife Conservation Commission (FWCC) and several issues relating to hunting licenses. Specifically the bill:

- Amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish.
- Creates a framework for penalties for violations of *recreational* fish and wildlife statutes and FWCC rules. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation. Within each violation level, enhanced penalties are provided for repeat violations.
- Creates a framework for penalties for violations of statutes and FWCC rules relating to captive wildlife for personal use and exhibition.
- Creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state.
- Authorizes FWCC to establish a "hunter mentoring" program by allowing an individual to defer the hunter safety course requirement for a hunting license for 1 year when the person is hunting under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from the requirement of a hunter safety course.
- Removes the current requirement that the FWCC's hunter safety course consists of no less than 12 hours of instruction, while maintaining the current requirement that the course consists of no more than 16 hours of instruction.
- Acknowledges the creation of a crossbow season permit (during the archery and muzzleloading seasons) and imposes a $5 annual fee for such permit.
- Increases the fee for an annual sportsman's license from $66 to $71 and for an annual gold sportsman's license from $82 to $87.

The bill has an unknown, but minimal, fiscal impact since no data exists on the expected number of persons who might take advantage of the hunter safety certification deferral provisions of the bill.

The bill takes effect on October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fee for an annual sportsman's license from $66 to $71 and an annual gold sportsman's license from $82 to $87 and imposes a $5 fee for an annual crossbow season permit.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The Fish and Wildlife Conservation Commission (FWCC) is a constitutionally created agency.[1] As such, it has exclusive regulatory powers with respect to wildlife, freshwater aquatic life, and marine life. The Legislature is limited by the Constitution to enacting laws establishing license fees and penalties for violating FWCC regulations, and enacting laws in aid of the FWCC.

Penalties

Currently, penalties for violations of laws and regulations relating to fish and wildlife are found in Chapter 370, F.S., (marine resources) and Chapter 372, F.S., (freshwater fish and wildlife).

Marine Resources
Subsections 370.021(1) and (2), F.S., provide for penalties for violations of statutes and rules of the FWCC relating to the conservation of marine resources. Persons convicted of such violations may be punished for a first conviction by incarceration up to 60 days or by a fine of not less than $100 nor more than $500 or both incarceration and a fine. For a second or subsequent conviction within a 12 month period, incarceration may be up to 6 months and a fine of between $250 and $1,000 may be imposed. Additional penalties may be assessed for major violations of statutes and FWCC rules. Section 370.021, F.S., also provides penalties for violations relating to the use of illegal nets (s. 370.021(3), F.S.), illegal possession of certain finfish in excess of a commercial bag limit (s. 370.021(4), F.S.), and illegally harvesting products by unlicensed sellers and purchasers (ss. 370.021(5) and (6), F.S.).

Freshwater Fish and Wildlife
Currently, s. 372.83, F.S., provides for certain penalties for violations of statutes and FWCC rules relating to freshwater fish and wildlife. Subsection 372.83(1), F.S., provides for the imposition of non-criminal penalties pursuant to s. 372.711, F.S., which provides for civil penalties. Subsection 372.83(2), F.S., provides that certain regulations are punishable as a second degree misdemeanor pursuant to s. 775.082, F.S. Subsection 372.83(3), F.S., provides that the forgery of a hunting license or possession thereof is punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Captive Wildlife
Sections 372.86 and 372.87, F.S., require that persons wanting to keep, possess, or exhibit any poisonous or venomous reptile must obtain a permit or license from the FWCC and pay an annual fee. Section 372.88, F.S., requires exhibitors of poisonous or venomous reptiles to post a bond conditioned that the exhibitor will indemnify and save harmless all persons from injury or damage, and that the exhibitor shall comply with all laws and rules for handling, housing, and exhibiting such animals. The provisions of Sections 372.89-92, F.S., also relate to poisonous or venomous reptiles and provide requirements for housing, transportation, inspection, rewards, and organized hunts for poisonous or venomous reptiles.

[1] Section 9, Article IV, Florida Constitution.

Sections 372.921 and 372.922, F.S., regulate the exhibition, sale and personal possession of wildlife.

Wildlife Violator Compact

The concept of a wildlife violator compact was first discussed in the early 1980s by several states in the Western Association of Fish and Wildlife Agencies. The compact was modeled after a Drivers License Compact which provided for reciprocity between compact member states to recognize each state's driver's licenses and to share with each state driver's violations and information on suspended and revoked driving licenses. In 1989, three states (Colorado, Nevada, and Oregon) were the first states to become member states of the wildlife violator compact.

The wildlife violator compact is a multi-state approach to the enforcement of hunting and fishing violations. Any suspension of fish and game license privileges resulting from a person's failure to comply with a citation or summons and complaint in a compact member's state will also be enforced by all other states participating in the compact. If a resident of a state that is participating in the compact is convicted of a fish and game violation in one of the member states, each compact state is notified and is required to treat the conviction as if it had occurred in that state for purposes of determining any applicable license restrictions or suspensions.

Currently, there are 21 states participating in the compact: Arizona, California, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

The compact is overseen by a board of administrators, consisting of one representative from the fish and wildlife agency or department of each participating state.

Hunting Licenses

Section 372.561, F.S., requires the FWCC to issue a license to take wild animal life when an applicant provides proof that he or she is eligible for the license. Hunting licenses may be sold by the FWCC or any tax collector in the state or by any subagent (for example, hunting supply stores) authorized by s. 372.574, F.S.

FWCC reported that in FY 2000-2001, there were 178,069 hunting licenses purchased in Florida. The number of Florida hunting licenses purchased since then has declined to 157,299 in FY 2004-2005. The number of hunting licenses purchased in Florida does not represent the number of persons (residents and non-residents) who are actually hunting, since Florida law exempts a number of persons from the hunting licenses requirement. In 2001, the U.S. Fish and Wildlife Service conducted a national survey of hunting, fishing and wildlife-associated recreation activities and estimated that Florida had 226,000 hunters.

Section 372.57, F.S., provides that an annual sportsman's license costs $66, except for persons age 64 and older the fee is $12. This license allows a person to take game and freshwater fish. An annual gold sportsman's license costs $82 and allows a person to take freshwater fish, saltwater fish, and game.

Exemptions from Requiring Hunting Licenses

Section 372.562, F.S., provides certain residents of Florida an exemption from paying a fee for a hunting license. Any resident who is certified or determined to be totally or permanently disabled for purposes of workers' compensation under chapter 440, F.S., under the provisions of the Railroad Retirement Board, by the U.S. Department of Veterans Affairs, or under the provisions of the U.S. Social Security Administration, is eligible for a hunting license at no cost. A hunting license obtained under this fee exemption after January 1, 1997, expires after 5 years and must be reissued, upon request, every 5 years. A person qualifying for this exemption under the Social Security Administration must renew the license every 2 years.

Section 372.562(2), F.S., provides that the following persons are exempt from having a hunting license:

- Any child under age 16;

- Any person hunting on his or her homestead property or the homestead property of the person's spouse or minor child;
- Any resident who is a member of the United State Armed Forces and not stationed in this state, when home on leave for 30 days or less; or
- Any resident age 65 or older.

Hunting licenses are non-transferable and must be in the personal possession of the person while taking or attempting to take wild animal life.

Hunter Safety Course

Section 372.5717, F.S., addresses the requirement for a hunter safety course as a condition for obtaining a hunting license and provides that:

- Persons born after June 1, 1975, may not be issued a hunting license without first successfully completing a hunter safety course and having in their possession a hunter safety certification card.
- The FWCC institute and coordinate a statewide hunter safety course to be offered in every county. The course must consist of no less than 12 hours and no more than 16 hours of instruction, including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.
- The FWCC issue a permanent hunter safety certification card to each person who successfully completes the hunter safety course. FWCC must also maintain records of each person issued a certification card and provide procedures for persons to seek a replacement card.
- A hunter safety certification card issued by any other state or Canadian province which shows that the person has successfully completed a hunter safety course approved by the FWCC, shall be an acceptable substitute for the hunter safety certification card issued by the FWCC.
- Persons not exempt from having a hunting license, have in their personal possession while hunting or purchasing a hunting license, proof of compliance with the hunter safety course requirements, including possessing the hunter safety certification card.
- A non-criminal penalty may be imposed on persons who violate the provisions and requirements of the hunter safety course requirements.
- The FWCC develop a voluntary hunter safety course statewide for youth 5 to 15 years of age. This course is not a substitute for the required hunter safety course described above.

The FWCC offers the state's hunter safety course through two general methods. One method is an in-class 12-hour course with the successful completion of a test, and a 3-hour experience at a firing range. The second option is either a CD or internet course for persons who wish to take advantage of this option. Persons can register on-line to take the hunter safety course, take on-line quizzes, and then are required to take a 4-hour classroom test and a 3-hour firing range experience.

International Hunter Education Association

The International Hunter Education Association (IHEA) is a national organization which is affiliated with the International Association of Fish and Wildlife Agencies and which represents the interests of 69 states, provincial, and federal hunter education coordinators, and 70, 000 hunter education instructors who teach hunter safety, ethics, and conservation courses to hunters.

The goals of the IHEA are to:

- Serve as the primary resource for information on hunter education;
- Promote hunter education by providing opportunities for the exchange of experiences;
- Promote hunter education by fostering cooperative efforts between government, organized groups, and industry;
- Uphold the image of hunting as a legitimate tool of wildlife management;
- Promote programs which prevent hunting accidents;
- Cultivate honesty, self-discipline, self-reliance, and responsible behavior among hunters; and
- Strive for constant improvement in hunter education programs.

According to the IHEA, state fish and game agencies began offering hunter safety programs in 1949.

All states, including Florida, are currently members of the IHEA. The IHEA does not regulate, nor does it have an accreditation program for any state's hunter safety course program.

The IHEA does have standards and a model hunter safety course program which states are free to adopt. Each state sets its own hunter safety education program regulations and regulates the program within its own jurisdiction. Each state (including the FWCC) has a coordinator/administrator responsible for the hunter safety program and ensures that the program adheres to IHEA standards which allow for reciprocity.

Reciprocity means that a hunter safety course taken in one state will be honored in all other states. Should a state's hunter safety program not meet IHEA standards, the certification for the hunter safety course may not be accepted by other states. Currently, according to IHEA staff, all states meet standards.

The IHEA model hunter safety program can be viewed and taken on-line at http://homestudy.ihea.com/contents_checklist.htm . The website lists the content areas for the hunter safety course. Besides general content on hunting, the IHEA hunter safety course has content on: firearms; ammunition; firearm safety; shooting skills; hunting safety and skills; hunter responsibility and ethics; and wildlife.

Hunter Mentoring Programs

Florida does not currently have a hunter mentoring program. However, there is current authorization for persons under the age of 16 to participate in hunting activities without needing a hunting license when they hunt in the presence of a parent or guardian (s. 372.562, F.S.)

Several other states have established hunter mentoring programs. For example, Wisconsin recently established a hunter mentoring program which allows persons above the age of eight who have not taken a hunter safety course to hunt with an adult mentor under highly controlled and safe circumstances.

The Wisconsin hunter mentoring program requires that the mentor must have the person within "arm's reach" at all times while hunting. No person may serve as a hunter mentor unless they are at least 18 years of age, and all mentors born after 1973 must have successfully completed the state's hunter safety program. The mentor must be the parent or guardian of the person for whom he or she is serving as a mentor, or be authorized by the parent or guardian to serve as a mentor. This requirement does not apply to a person serving as a mentor for a person who is 18 years of age or older. A person who is authorized to hunt with a mentor and the mentor with whom the person hunts may jointly have only one firearm or one bow in their possession or control while hunting. A mentor may take only one person at a time for which he or she is serving as a mentor. Finally, the program requires the development of an information pamphlet containing hunter safety information to be given to persons hunting with a mentor.

The Department of Texas Parks and Wildlife has had a hunter mentoring program since 2004. The program allows a person 17 or older, who has not taken and successfully completed a hunter education course, to defer the completion of the course and purchase a special deferral hunting license for a $10 fee in addition to the regular hunting license fee. The deferral hunting license can only be purchased on a one-time basis and is effective until August 31 of the same year the deferral hunting license was purchased.

Under the Texas hunter education deferral program, a hunter with a deferral hunting license must be accompanied (within range of normal voice communication) by another licensed hunter 17-years-of-age or older who has completed and passed the hunter education program or is otherwise exempt from the hunter education program. Proof of hunter safety certification or the deferral must be on the person

while hunting. A person who has been convicted of or has received a deferred adjudication for a violation of the mandatory hunter education requirement is prohibited from purchasing a deferral.

Texas also has a hunter mentoring program for persons who have qualified as certified hunter safety instructors, but for whatever reasons have been reluctant to use their acquired knowledge and skills in hunting safety to teach courses for other hunters. The mentoring program is targeting new hunter education instructors and provides an opportunity for these instructors to team up with a seasoned more experienced hunting safety instructor who will help organize classes and provide support for the new hunter education instructor.

Crossbow Hunting

The use of crossbows for hunting is not currently allowed in Florida. In September 2004, the FWCC reviewed the issue of allowing the use of crossbows during the muzzleloading hunting season. FWCC staff were directed to determine what Florida hunters' opinions were on this issue. FWCC contracted with the Florida State University Government Performance Survey Research Center to conduct the survey. Findings from a random sample of Florida hunters indicated that 7% owned a crossbow and 2% said they had used a crossbow to hunt deer in the previous 3 years. About 45% of those surveyed favored a change to allow the use of crossbows on *wildlife management areas and public lands* during the archery season and 44% favored a change to allow the use of crossbows during the muzzleloading season. Approximately 51% favored a change to allow the use of crossbows on *private lands* during the archery season and 52% favored use during the muzzleloading season.

According to FWCC staff, the use of crossbows during archery and/or muzzleloading gun seasons is allowed in several states including Georgia, Alabama, Arkansas, Wyoming, and Ohio.

Based upon the results of the survey, FWCC staff recommended that rule changes be made that permitted the use of crossbows during archery and muzzleloading hunting seasons.

In February 2006, the FWCC approved the adoption of proposed rules (68A-13.004, 68A-12.002, and 68A-1.004) that establish new crossbow seasons during archery and muzzleloading hunting seasons.

EFFECT OF PROPOSED CHANGES

Penalties

Marine Resources

The bill amends s. 370.021, F.S., to provide that the penalties provided therein are limited to violations related to the *commercial* harvesting of marine fish. The bill provides a definition of "commercial harvest." Penalties for violations of laws and regulations relating to the *recreational* taking of marine fish are provided in the newly created s. 372.83, F.S. The bill does not make any changes in the penalties.

Freshwater Fish and Wildlife

The bill amend s. 372.83, F.S., which establishes a framework for penalties that are applied to violations of *recreational* fish (freshwater and saltwater) and wildlife statutes and rules of the FWCC. The bill provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

A Level 1 violation constitutes noncriminal infractions punishable by the imposition of a civil penalty of $50 for the first conviction and $250 for each subsequent conviction. Citations shall be issued for these violations and the citation shall include a requirement for appearance before the county court. A person who willfully refuses the citation or who willfully fails to pay the civil penalty commits a misdemeanor of the second degree. Included in the list of Level 1 violations are violations of:

- FWCC rules or orders relating to quota hunting permits, and daily use permits
- Statutory provisions relating to hunting, fishing and trapping licenses

- Statutory provisions relating to hunter safety certification
- Statutory provisions relating to required clothing for persons hunting deer

A Level 2 violation constitutes a first degree misdemeanor. A first conviction is punishable under s. 775.082, F.S. (relating to sentencing), or s. 775.083, F.S. (relating to fines). Persons convicted of subsequent Level 2 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 2 violations are violations of:

- FWCC rules or orders relating to the season, bag limits and size limits for saltwater fish, freshwater game fish, and wildlife
- FWCC rules or orders relating to access to wildlife management areas
- FWCC rules or orders relating to landing requirements for saltwater fish and freshwater game fish
- FWCC rules or orders relating to the use of dogs for hunting
- Statutory provisions relating to bonefish and crawfish
- Statutory provisions relating to feeding of alligators and crocodiles

A Level 3 violation also constitutes a first degree misdemeanor punishable under s. 775.082 or s. 775.083, F.S. As with Level 2 violations, persons convicted of subsequent Level 3 violations are subject to increasing amounts of fines and license suspensions. Included in the list of Level 3 violations are violations of:

- FWCC rules or orders relating to the sale of saltwater fish
- Statutory provisions relating to "major violations"
- Statutory provisions relating to the taking of saltwater fish with nets
- Statutory provisions relating to hunting and fishing while a license is suspended or revoked
- Statutory provisions relating to the illegal sale or possession of alligators, and the illegal taking and possession of deer and wild turkey

A Level 4 violation constitutes a felony of the third degree punishable under s. 775.082 or s. 775.083, F.S. Level 4 violations include violations of:

- Statutory provisions relating to the molestation of stone crab, blue crab, and crawfish gear
- Statutory provisions relating to forgery of a license or possession of a forged license
- Statutory provisions relating to the sale of deer or turkey that is illegally taken

Captive Wildlife

The bill creates s. 372.935, F.S., relating to captive wildlife penalties. This section establishes a framework which provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

A Level 1 violation constitutes noncriminal infraction punishable by the imposition of a civil penalty of $50 for the first conviction and $250 for each subsequent conviction; an additional civil penalty, in the amount of the license fee required, shall be assessed for failing to have a required permit or license.

Any person who willfully refuses to post bond or accept and sign a citation is guilty of a second degree misdemeanor. Any person who fails to pay the civil penalty within 30 days or fails to appear is guilty of a second degree misdemeanor.

Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty. The court, after a hearing, shall determine whether an infraction has been committed. The court may impose a civil penalty (not less than $50 for first conviction or $250 for a subsequent conviction) or more than $500 if the commission of the infraction as been proven beyond a reasonable doubt. A person found to have committed an infraction may appeal that finding to circuit court.

Included in the list of Level 1 violations are violations of:

- FWCC rules or orders of the requiring free permits or other authorizations to possess captive wildlife.
- FWCC rules or orders of the relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.
- FWCC rules or orders of the requiring permits to possess captive wildlife that a fee is charged for, when the person being charged was issued the permit and the permit has expired less than 1 year prior to the violation.

A Level 2 violation constitutes a second degree misdemeanor. A first conviction is punishable under s. 775.082, F.S. (relating to sentencing), or s. 775.083, F.S. (relating to fines). Persons convicted of subsequent Level 2 violations are subject to increasing amounts of fines and license suspensions.

Included in the list of Level 2 violations are violations of:

- FWCC rules or orders that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife unless stated in subsection (1).
- FWCC rules or orders relating to captive wildlife not specified in subsection (1) or (3).
- FWCC rules or orders which require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.
- S. 372.86, F.S., relating to possessing or exhibiting reptiles.
- S. 372.87, F.S., relating to licensing or reptiles.
- S. 372.88, F.S., relating to bonding requirements for exhibits.
- S. 372.89, F.S., relating to housing requirements.
- S. 372.90, F.S., relating to transportation.
- S. 372.901, F.S., relating to inspection.
- S. 372.91, F.S., relating to limitation of access to reptiles.
- S. 372.921, F.S., relating to exhibition or sale of wildlife.
- S. 372.922, F.S., relating to personal possession of wildlife.

A Level 3 violation constitutes a first degree misdemeanor punishable under s. 775.082 or s. 775.083, F.S. if they have not been previously convicted within the past 10 years. A level 3 violation within the past 10 years is a first degree misdemeanor with a minimum mandatory fine of $750 and a suspension of all licenses issued under this chapter relating to captive wildlife for 3 years.

Included in the list of Level 3 violations are violations of:

- FWCC rules or orders which require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.
- FWCC rules or orders related to captive wildlife when the violation results in serious bodily injury to another person.
- FWCC rules or orders relating to the use of gasoline, other chemicals, or gaseous substances on wildlife.
- FWCC rules or orders prohibiting the release of wildlife for which only conditional possession is allowed.
- FWCC rules or orders prohibiting knowingly entering false information on an application for a license or permit to possess captive wildlife.
- S. 372.265, F.S., relating to illegal importation or introduction of foreign wildlife.

A Level 4 violation constitutes a felony of the third degree punishable under s. 775.082 or s. 775.083, F.S., with a permanent revocation of all licenses or permits to possess captive wildlife under this chapter.

Level 4 violations include violations of:

- S. 370.081, F.S., relating to the illegal importation and possession of nonindigenous marine plants and animals.
- S. 370.92, F.S., relating to release of reptiles of concern.
- FWCC rules or orders relating to the importation, possession, or release of fish and wildlife for which possession is prohibited.

Wildlife Violators Compact
The bill creates the Wildlife Violators Compact which allows Florida to join 21 other compact member states in recognizing fish and wildlife violations by persons from member states and sharing such information among each member state. The Compact specifically provides for:

- Findings relating to the management of wildlife resources
- Definitions
- Procedures for the state issuing a citation
- Procedures for the licensing authority of the home state of the violator
- Reciprocal recognition of a license suspension
- Procedures for the entry into and withdrawal from the Compact

Hunting Licenses

Hunter Mentoring Program
The bill amends s. 372.5717, F.S., to authorize the FWCC to defer the hunter safety course requirement for one year and issue a restricted hunting license to persons wanting to try out hunting. Such persons may receive only one deferment and a person with a restricted hunting license can only hunt under the direct supervision and in the physical presence of an adult who has successfully completed or is exempt from completing the required hunter safety course.

For those persons hunting under the deferral provisions of the bill, the bill provides an exemption from the current requirement that a hunter safety course certification must be in the person's possession while hunting or when purchasing a hunting license.

Hunter Safety Course
The bill also amends s. 372.5717, F.S., to remove the current requirement that the FWCC's hunter safety course consist of no less than 12 hours of instruction, while maintaining the current requirement that the course consist of no more than 16 hours of instruction.

Crossbow Hunting Seasons
The bill amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a $5 annual fee for such permit.

Hunting Licenses Fee Increases
The bill increases the fee for an annual sportsman's license from $66 to $71 and an annual gold sportsman's license from $82 to $87.

C. SECTION DIRECTORY:

Section 1: Amends s. 370.01, F.S., to define "commercial harvest" to mean the taking, harvesting, or attempting to harvest saltwater products for sale or with intent to sell.

Section 2: Amends s. 370.021, F.S., to provide base penalties and to clarify that this section applies exclusively to commercial harvesting.

Section 3: Amends s. 370.028, F.S. to conform penalty provisions.

Section 4: Amends s. 370.061, F.S., to correct a cross reference.

Section 5: Amends s. 370.063, F.S., to conform penalty provisions for commercial harvesters.

Section 6: Amends s. 370.08,F.S., to conform penalty provisions for commercial harvesters.

Section 7: Amends s. 370.081,F.S., to conform penalty provisions for commercial harvesters.

Section 8: Amends s. 370.1105,F.S., to conform penalty provisions for commercial harvesters.

Section 9: Amends s. 370.1121,F.S., to conform penalty provisions for commercial harvesters.

Section 10: Amends s. 370.13,F.S., to conform penalty provisions for commercial harvesters.

Section 11: Amends s. 370.135,F.S., to conform penalty provisions for commercial harvesters.

Section 12: Amends s. 370.14,F.S., to conform penalty provisions for commercial harvesters.

Section 13: Amends s. 370.142,F.S., to conform penalty provisions for commercial harvesters.

Section 14: Amends s. 372.57,F.S., to provide for a crossbow season permit and increase certain license fees.

Section 15: Amends s. 372.5704, F.S., to conform penalty provisions.

Section 16: Amends s. 372.571, F.S., to correct cross references.

Section 17: Amends s. 372.5717, F.S., to authorize the FWCC to waive the hunter safety education course for 1 year and issue a one-time restricted hunting license to persons wanting to hunt.

Section 18: Amends s. 372.573, F.S., to correct cross references.

Section 19: Amends s. 372.83, F.S., to create four levels of violations with commensurate penalties of higher severity.

Section 20: Creates s. 372.935, F.S., to provide penalties relating to captive wildlife.

Section 21: Amends s. 372.26, F.S., to conform penalty provisions.

Section 22: Amends s. 372.265, F.S., to conform penalty provisions.

Section 23: Amends s. 372.661, F.S., to conform penalty provisions.

Section 24: Amends s. 372.662, F.S., to conform penalty provisions.

Section 25: Amends s. 372.667, F.S., to conform penalty provisions.

Section 26: Amends s. 372.705, F.S., to conform penalty provisions.

Section 27: Amends s. 372.988, F.S., to conform penalty provisions.

Section 28: Amends s. 372.99022, F.S., to conform penalty provisions.

Section 29: Amends s. 372.99, F.S., to conform penalty provisions.

Section 30: Amends s. 372.9903, F.S., to conform penalty provisions.

Section 31: Creates s. 372.831, F.S., to adopt in statute the Wildlife Violator Compact.

Section 32: Creates s. 372.8311, F.S., to provide that FWCC is the licensing authority for the state to enforce the provisions of the Wildlife Violator Compact.

Section 33: Repeals ss. 372.711, F.S., (relating to noncriminal infractions) and 372.912, F.S., (relating to organized poisonous reptile hunts).

Section 34: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

   See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would have a positive impact on the private sector depending on the number of persons participating in and using the hunter safety education deferral provisions of the bill, purchasing a hunting license at the increased rate (annual sportsman's license increased from $66 to $71 and an annual gold sportsman's license increased from $82 to $87), and in turn, purchasing hunting equipment and supplies.

D. FISCAL COMMENTS:

FWCC has determined that there will be minimal, if any, additional costs associated with the proposed penalties section of the bill. However, it is possible that there could be an increase in the amount of revenue received from the enhanced penalties for certain repeat offenders.

FWCC has determined that no additional funds will be needed to implement the Wildlife Violator Compact. Currently, the Wildlife Violator's Compact database is hosted by the Utah Department of Public Safety (Criminal Investigation Bureau). The database was developed to answer the needs of participating member states, to exchange basic identification information, and conviction information about revokees subject to reciprocal revocation.

FWCC has determined that the revenue impacts from the hunter safety education deferral provisions of the bill and the purchase of hunting licenses are unknown since FWCC has no estimates of the number of persons who may participate in this program. Unlike the Texas hunter mentoring program, the bill does not provide for a fee in addition to the normal hunting license fee. FWCC views the revenue impact of the bill as less important than using the mentoring and deferral provisions of the bill to "...remove obstacles and increase efforts to engage new hunters..." in order to reverse the trend of declining hunters in Florida.

FWCC estimates that there would be minimal costs associated with programming its Total Licensing System (TLS), which produces the state's hunting licenses, in issuing and identifying a one-year-option deferral hunting license. A person seeking the special deferral hunting license would purchase a regular hunting license at the regular cost and declare that they do not have the required hunter safety education certificate. The TLS and the actual hunting license would identify that the person is using the deferral option. Since the deferral option is only valid for one-year, the TLS would be programmed to deny the purchase of a subsequent hunting license if the person has not successfully completed the hunter safety course and produced the certification documentation at the time of the purchase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, reduce the authority that cities or counties have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to "exercise the regulatory and executive powers of the state with respect to" fresh water aquatic life, marine life, and wild animal life. The Legislature may only "enact laws in aid of" the FWCC not inconsistent with the Constitutional provision. The bill appears to be "in aid of" the FWCC and does not appear to be inconsistent with the Constitution.

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules nor alter the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the effective date for the bill is October 1, 2006, this effective date may not provide for sufficient time for the FWCC law enforcement and court systems to make the necessary changes related to the new penalty structure. Also, sufficient notice of the new penalty structure needs to be given to the persons who are purchasing hunting and fishing licenses.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 471. The strike-all amendment makes the following changes to the bill:

- Limits the penalties in s. 370.021, F.S., to commercial harvesting of saltwater fish.
- Creates a framework for and enhances penalties for violations of recreational fish and wildlife statutes and FWCC rules.
- Creates penalties for violations of statutes and rules related to the possession and exhibition of captive wildlife.
- Creates the Wildlife Violators Compact in statute allowing Florida to join 21 other states in recognizing fish and wildlife violations.
- Amends s. 372.57, F.S., to acknowledge the creation of a crossbow season permit (during the archery and muzzleloading seasons) and to impose of a $5 annual fee for such permit.
- Increases the fees for certain hunting and fishing licenses.

On April 4th, 2006, the Criminal Justice Committee adopted a strike-all amendment to HB 471 which made technical changes and an amendment to the strike-all amendment.

The amendment to the strike-all amendment creates s. 372.935, F.S., relating to captive wildlife penalties which establishes a framework (similar to the framework for violations of recreational fish and wildlife statutes and FWCC rules) that provides four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.

This analysis has been revised to reflect the strike-all amendment and the amendment to the strike-all amendment.

CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to fish and wildlife; amending s. 370.01,
7 F.S.; defining the term "commercial harvester"; amending
8 s. 370.021, F.S.; providing for base penalties; conforming
9 penalty provisions for commercial harvesters; providing
10 penalties for persons other than commercial harvesters;
11 amending s. 370.028, F.S.; conforming penalty provisions;
12 amending s. 370.061, F.S.; correcting a cross-reference;
13 amending ss. 370.063, 370.08, 370.081, 370.1105, 370.1121,
14 370.13, 370.135, 370.14, and 370.142, F.S.; conforming
15 penalty provisions for commercial harvesters; providing
16 penalties for persons other than commercial harvesters;
17 amending s. 372.57, F.S.; specifying seasonal recreational
18 activities for which a license or permit is required;
19 increasing fees for certain licenses to conform; providing
20 fees for crossbow and archery season permits; providing
21 for crossbow and archery season permits; providing
22 penalties for the production, possession, and use of
23 fraudulent fishing and hunting licenses; providing

24 penalties for the taking of game and fish with a suspended
25 or revoked license; amending s. 372.5704, F.S.; conforming
26 penalty provisions; amending ss. 372.571 and 372.573,
27 F.S.; correcting cross-references; amending s. 372.5717,
28 F.S.; authorizing the Fish and Wildlife Conservation
29 Commission to defer the hunter safety education course
30 requirement for a specified time period and for a
31 specified number of times; providing for special
32 authorization and conditions to hunt using a hunter safety
33 education deferral; deleting the mandatory minimum number
34 of instructional hours for persons required to take the
35 hunter safety education course; providing an exemption for
36 the display of hunter safety education certificates;
37 providing penalties; amending s. 372.83, F.S.; revising
38 the penalties for violations of rules, orders, and
39 regulations of the Fish and Wildlife Conservation
40 Commission; creating penalties for recreational violations
41 of certain saltwater fishing regulations established in
42 ch. 370, F.S.; providing for court appearances in certain
43 circumstances; providing for Level One, Level Two, Level
44 Three, and Level Four offenses; providing for enhanced
45 penalties for multiple violations; providing for
46 suspension and revocation of licenses and permits,
47 including exemptions from licensing and permit
48 requirements; defining the term "conviction" for purposes
49 of penalty provisions; creating s. 372.935, F.S.;
50 providing penalties for violations involving captive
51 wildlife and poisonous or venomous reptiles; specifying

52 violations that constitute noncriminal infractions or
53 second degree misdemeanors; amending ss. 372.26, 372.265,
54 372.661, 372.662, 372.667, 372.705, 372.988, 372.99022,
55 372.99, and 372.9903, F.S.; conforming penalty provisions;
56 creating s. 372.831, F.S.; creating the Wildlife Violators
57 Compact; providing findings and purposes; providing
58 definitions; providing procedures for states issuing
59 citations for wildlife violations; providing requirements
60 for the home state of a violator; providing for reciprocal
61 recognition of a license suspension; providing procedures
62 for administering the compact; providing for entry into
63 and withdrawal from the compact; providing for
64 construction of the compact and for severability; creating
65 s. 372.8311, F.S.; providing for enforcement of the
66 compact by the Fish and Wildlife Conservation Commission;
67 providing that a suspension under the compact is subject
68 to limited review under ch. 120, F.S.; providing that
69 actions taken by another state or its courts are not
70 reviewable; repealing s. 372.711, F.S., relating to
71 noncriminal infractions; repealing s. 372.912, F.S.,
72 relating to organized poisonous reptile hunts; providing
73 an effective date.
74
75 Be It Enacted by the Legislature of the State of Florida:
76
77 Section 1. Present subsections (5) through (28) of section
78 370.01, Florida Statutes, are redesignated as subsections (6)

79 through (29), respectively, and a new subsection (5) is added to
80 that section to read:
81 370.01 Definitions.--In construing these statutes, where
82 the context does not clearly indicate otherwise, the word,
83 phrase, or term:
84 (5) "Commercial harvester" means any person, firm, or
85 corporation that takes, harvests, or attempts to take or harvest
86 saltwater products for sale or with intent to sell as evidenced
87 by any of the following:
88 (a) The person, firm, or corporation is operating under or
89 is required to operate under a license or permit or
90 authorization issued pursuant to this chapter;
91 (b) The person, firm, or corporation is using gear that is
92 prohibited for use in the harvest of recreational amounts of any
93 saltwater product being taken or harvested; or
94 (c) The person, firm, or corporation is harvesting any
95 saltwater product in an amount that is at least 2 times the
96 recreational bag limit for the saltwater product being taken or
97 harvested.
98 Section 2. Subsections (1), (2), (4), (5), (6), and (12)
99 of section 370.021, Florida Statutes, are amended to read:
100 370.021 Administration; rules, publications, records;
101 penalties; injunctions.--
102 (1) BASE PENALTIES.--Unless otherwise provided by law, any
103 ~~person, firm, or corporation~~ who violates ~~is convicted for~~
104 ~~violating~~ any provision of this chapter, or any rule of the Fish
105 and Wildlife Conservation Commission relating to the
106 conservation of marine resources, shall be punished:

107 (a) Upon a first conviction, by imprisonment for a period
108 of not more than 60 days or by a fine of not less than $100 nor
109 more than $500, or by both such fine and imprisonment.
110 (b) On a second or subsequent conviction within 12 months,
111 by imprisonment for not more than 6 months or by a fine of not
112 less than $250 nor more than $1,000, or by both such fine and
113 imprisonment.
114
115 Upon final disposition of any alleged offense for which a
116 citation for any violation of this chapter or the rules of the
117 commission has been issued, the court shall, within 10 days,
118 certify the disposition to the commission.
119 (2) MAJOR VIOLATIONS.--In addition to the penalties
120 provided in paragraphs (1)(a) and (b), the court shall assess
121 additional penalties against any commercial harvester ~~person,~~
122 ~~firm, or corporation~~ convicted of major violations as follows:
123 (a) For a violation involving more than 100 illegal blue
124 crabs, crawfish, or stone crabs, an additional penalty of $10
125 for each illegal blue crab, crawfish, stone crab, or part
126 thereof.
127 (b) For a violation involving the taking or harvesting of
128 shrimp from a nursery or other prohibited area, or any two
129 violations within a 12-month period involving shrimping gear,
130 minimum size (count), or season, an additional penalty of $10
131 for each pound of illegal shrimp or part thereof.
132 (c) For a violation involving the taking or harvesting of
133 oysters from nonapproved areas or the taking or possession of

134 unculled oysters, an additional penalty of $10 for each bushel
135 of illegal oysters.
136 (d) For a violation involving the taking or harvesting of
137 clams from nonapproved areas, an additional penalty of $100 for
138 each 500 count bag of illegal clams.
139 (e) For a violation involving the taking, harvesting, or
140 possession of any of the following species, which are
141 endangered, threatened, or of special concern:
142 1. Shortnose sturgeon (Acipenser brevirostrum);
143 2. Atlantic sturgeon (Acipenser oxyrhynchus);
144 3. Common snook (Centropomus undecimalis);
145 4. Atlantic loggerhead turtle (Caretta caretta caretta);
146 5. Atlantic green turtle (Chelonia mydas mydas);
147 6. Leatherback turtle (Dermochelys coriacea);
148 7. Atlantic hawksbill turtle (Eretmochelys imbricata
149 imbracata);
150 8. Atlantic ridley turtle (Lepidochelys kempi); or
151 9. West Indian manatee (Trichechus manatus latirostris),
152
153 an additional penalty of $100 for each unit of marine life or
154 part thereof.
155 (f) For a second or subsequent conviction within 24 months
156 for any violation of the same law or rule involving the taking
157 or harvesting of more than 100 pounds of any finfish, an
158 additional penalty of $5 for each pound of illegal finfish.
159 (g) For any violation involving the taking, harvesting, or
160 possession of more than 1,000 pounds of any illegal finfish, an

161 additional penalty equivalent to the wholesale value of the
162 illegal finfish.
163 (h) Permits issued to any commercial harvester ~~person,~~
164 ~~firm, or corporation~~ by the commission to take or harvest
165 saltwater products, or any license issued pursuant to s. 370.06
166 or s. 370.07 may be suspended or revoked by the commission,
167 pursuant to the provisions and procedures of s. 120.60, for any
168 major violation prescribed in this subsection:
169 1. Upon a first conviction, for up to 30 calendar days.
170 2. Upon a second conviction which occurs within 12 months
171 after a prior violation, for up to 90 calendar days.
172 3. Upon a third conviction which occurs within 24 months
173 after a prior conviction, for up to 180 calendar days.
174 4. Upon a fourth conviction which occurs within 36 months
175 after a prior conviction, for a period of 6 months to 3 years.
176 (i) Upon the arrest and conviction for a major violation
177 involving stone crabs, the licenseholder must show just cause
178 why his or her license should not be suspended or revoked. For
179 the purposes of this paragraph, a "major violation" means a
180 major violation as prescribed for illegal stone crabs; any
181 single violation involving possession of more than 25 stone
182 crabs during the closed season or possession of 25 or more
183 whole-bodied or egg-bearing stone crabs; any violation for trap
184 molestation, trap robbing, or pulling traps at night; or any
185 combination of violations in any 3-consecutive-year period
186 wherein more than 75 illegal stone crabs in the aggregate are
187 involved.

188 (j) Upon the arrest and conviction for a major violation
189 involving crawfish, the licenseholder must show just cause why
190 his or her license should not be suspended or revoked. For the
191 purposes of this paragraph, a "major violation" means a major
192 violation as prescribed for illegal crawfish; any single
193 violation involving possession of more than 25 crawfish during
194 the closed season or possession of more than 25 wrung crawfish
195 tails or more than 25 egg-bearing or stripped crawfish; any
196 violation for trap molestation, trap robbing, or pulling traps
197 at night; or any combination of violations in any 3-consecutive-
198 year period wherein more than 75 illegal crawfish in the
199 aggregate are involved.
200 (k) Upon the arrest and conviction for a major violation
201 involving blue crabs, the licenseholder shall show just cause
202 why his or her saltwater products license should not be
203 suspended or revoked. This paragraph shall not apply to an
204 individual fishing with no more than five traps. For the
205 purposes of this paragraph, a "major violation" means a major
206 violation as prescribed for illegal blue crabs, any single
207 violation wherein 50 or more illegal blue crabs are involved;
208 any violation for trap molestation, trap robbing, or pulling
209 traps at night; or any combination of violations in any 3-
210 consecutive-year period wherein more than 100 illegal blue crabs
211 in the aggregate are involved.
212 (l) Upon the conviction for a major violation involving
213 finfish, the licenseholder must show just cause why his or her
214 saltwater products license should not be suspended or revoked.
215 For the purposes of this paragraph, a major violation is

216 prescribed for the taking and harvesting of illegal finfish, any
217 single violation involving the possession of more than 100
218 pounds of illegal finfish, or any combination of violations in
219 any 3-consecutive-year period wherein more than 200 pounds of
220 illegal finfish in the aggregate are involved.
221 (m) For a violation involving the taking or harvesting of
222 any marine life species, as those species are defined by rule of
223 the commission, the harvest of which is prohibited, or the
224 taking or harvesting of such a species out of season, or with an
225 illegal gear or chemical, or any violation involving the
226 possession of 25 or more individual specimens of marine life
227 species, or any combination of violations in any 3-year period
228 involving more than 70 such specimens in the aggregate, the
229 suspension or revocation of the licenseholder's marine life
230 endorsement as provided in paragraph (h).
231
232 The penalty provisions of this subsection apply to commercial
233 harvesters and wholesale and retail saltwater products dealers
234 as defined in s. 370.07. Any other person who commits a major
235 violation under this subsection commits a Level Three violation
236 under s. 372.83. Notwithstanding the provisions of s. 948.01, no
237 court may suspend, defer, or withhold adjudication of guilt or
238 imposition of sentence for any major violation prescribed in
239 this subsection. The proceeds from the penalties assessed
240 pursuant to this subsection shall be deposited into the Marine
241 Resources Conservation Trust Fund to be used for marine
242 fisheries research or into the commission's Federal Law
243 Enforcement Trust Fund as provided in s. 372.107, as applicable.

244 (4) ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING
245 CERTAIN FINFISH.--
246 (a) It is a major violation pursuant to this section~~,~~
247 ~~punishable as provided in paragraph (3)(b),~~ for any person to be
248 in possession of any species of trout, snook, or redfish which
249 is three fish in excess of the recreational or commercial daily
250 bag limit.
251 (b) A commercial harvester who violates this subsection
252 shall be punished as provided in paragraph (3)(b). Any other
253 person who violates this subsection commits a Level Three
254 violation under s. 372.83.
255 (5) SALTWATER PRODUCTS; UNLICENSED SELLERS; ILLEGALLY
256 HARVESTED PRODUCTS.--In addition to other penalties authorized
257 in this chapter, any violation of s. 370.06 or s. 370.07, or
258 rules of the commission implementing s. 370.06 or s. 370.07,
259 involving the purchase of saltwater products by a commercial
260 wholesale dealer, retail dealer, or restaurant facility for
261 public consumption from an unlicensed person, firm, or
262 corporation, ~~or the sale of saltwater products by an unlicensed~~
263 ~~person, firm, or corporation~~ or the purchase or sale of any
264 saltwater product known to be taken in violation of s. 16, Art.
265 X of the State Constitution, or rule or statute implementing the
266 provisions thereof, by a commercial wholesale dealer, retail
267 dealer, or restaurant facility, for public consumption, is a
268 major violation, and the commission may assess the following
269 penalties:

270 (a) For a first violation, the commission may assess a
271 civil penalty of up to $2,500 and may suspend the wholesale or
272 retail dealer's license privileges for up to 90 calendar days.
273 (b) For a second violation occurring within 12 months of a
274 prior violation, the commission may assess a civil penalty of up
275 to $5,000 and may suspend the wholesale or retail dealer's
276 license privileges for up to 180 calendar days.
277 (c) For a third or subsequent violation occurring within a
278 24-month period, the commission shall assess a civil penalty of
279 $5,000 and shall suspend the wholesale or retail dealer's
280 license privileges for up to 24 months.
281
282 Any proceeds from the civil penalties assessed pursuant to this
283 subsection shall be deposited into the Marine Resources
284 Conservation Trust Fund and shall be used as follows: 40 percent
285 for administration and processing purposes and 60 percent for
286 law enforcement purposes.
287 (6) PENALTIES FOR UNLICENSED SALE, PURCHASE, OR
288 HARVEST.--It is a major violation and punishable as provided in
289 this subsection for <u>any</u> ~~an~~ unlicensed person<u>, firm, or</u>
290 <u>corporation</u> who is required to be licensed <u>as a commercial</u>
291 <u>harvester or a wholesale or retail saltwater products dealer</u>
292 under this chapter to sell or purchase any saltwater product or
293 to harvest or attempt to harvest any saltwater product with
294 intent to sell the saltwater product.
295 (a) Any person<u>, firm, or corporation</u> who sells or
296 purchases any saltwater product without having purchased the

297 licenses required by this chapter for such sale is subject to
298 ~~additional~~ penalties as follows:
299 1. A first violation is a misdemeanor of the second
300 degree, punishable as provided in s. 775.082 or s. 775.083.
301 2. A second violation is a misdemeanor of the first
302 degree, punishable as provided in s. 775.082 or s. 775.083, and
303 such person may also be assessed a civil penalty of up to $2,500
304 and is subject to a suspension of all license privileges under
305 this chapter and chapter 372 for a period not exceeding 90 days.
306 3. A third violation is a misdemeanor of the first degree,
307 punishable as provided in s. 775.082 or s. 775.083, with a
308 mandatory minimum term of imprisonment of 6 months, and such
309 person may also be assessed a civil penalty of up to $5,000 and
310 is subject to a suspension of all license privileges under this
311 chapter and chapter 372 for a period not exceeding 6 months.
312 4. A third violation within 1 year after a second
313 violation is a felony of the third degree, punishable as
314 provided in s. 775.082 or s. 775.083, with a mandatory minimum
315 term of imprisonment of 1 year, and such person shall be
316 assessed a civil penalty of $5,000 and all license privileges
317 under this chapter and chapter 372 shall be permanently revoked.
318 5. A fourth or subsequent violation is a felony of the
319 third degree, punishable as provided in s. 775.082 or s.
320 775.083, with a mandatory minimum term of imprisonment of 1
321 year, and such person shall be assessed a civil penalty of
322 $5,000 and all license privileges under this chapter and chapter
323 372 shall be permanently revoked.

324 (b) Any person whose license privileges under this chapter
325 have been permanently revoked and who thereafter sells or
326 purchases or who attempts to sell or purchase any saltwater
327 product commits a felony of the third degree, punishable as
328 provided in s. 775.082 or s. 775.083, with a mandatory minimum
329 term of imprisonment of 1 year, and such person shall also be
330 assessed a civil penalty of $5,000. All property involved in
331 such offense shall be forfeited pursuant to s. 370.061.
332 (c) Any commercial harvester or wholesale or retail
333 saltwater products dealer ~~person~~ whose license privileges under
334 this chapter are under suspension and who during such period of
335 suspension sells or purchases or attempts to sell or purchase
336 any saltwater product shall be assessed the following penalties:
337 1. A first violation, or a second violation occurring more
338 than 12 months after a first violation, is a first degree
339 misdemeanor, punishable as provided in ss. 775.082 and 775.083,
340 and such commercial harvester or wholesale or retail saltwater
341 products dealer ~~person~~ may be assessed a civil penalty of up to
342 $2,500 and an additional suspension of all license privileges
343 under this chapter and chapter 372 for a period not exceeding 90
344 days.
345 2. A second violation occurring within 12 months of a
346 first violation is a third degree felony, punishable as provided
347 in ss. 775.082 and 775.083, with a mandatory minimum term of
348 imprisonment of 1 year, and such commercial harvester or
349 wholesale or retail saltwater products dealer ~~person~~ may be
350 assessed a civil penalty of up to $5,000 and an additional
351 suspension of all license privileges under this chapter and

352 chapter 372 for a period not exceeding 180 days. All property
353 involved in such offense shall be forfeited pursuant to s.
354 370.061.
355 3. A third violation within 24 months of the second
356 violation or subsequent violation is a third degree felony,
357 punishable as provided in ss. 775.082 and 775.083, with a
358 mandatory minimum term of imprisonment of 1 year, and such
359 commercial harvester or wholesale or retail saltwater products
360 dealer ~~person~~ shall be assessed a mandatory civil penalty of up
361 to $5,000 and an additional suspension of all license privileges
362 under this chapter and chapter 372 for a period not exceeding 24
363 months. All property involved in such offense shall be forfeited
364 pursuant to s. 370.061.
365 (d) Any commercial harvester ~~person~~ who harvests or
366 attempts to harvest any saltwater product with intent to sell
367 the saltwater product without having purchased a saltwater
368 products license with the requisite endorsements is subject to
369 penalties as follows:
370 1. A first violation is a misdemeanor of the second
371 degree, punishable as provided in s. 775.082 or s. 775.083.
372 2. A second violation is a misdemeanor of the first
373 degree, punishable as provided in s. 775.082 or s. 775.083, and
374 such commercial harvester ~~person~~ may also be assessed a civil
375 penalty of up to $2,500 and is subject to a suspension of all
376 license privileges under this chapter and chapter 372 for a
377 period not exceeding 90 days.
378 3. A third violation is a misdemeanor of the first degree,
379 punishable as provided in s. 775.082 or s. 775.083, with a

380 mandatory minimum term of imprisonment of 6 months, and such
381 commercial harvester ~~person~~ may also be assessed a civil penalty
382 of up to $5,000 and is subject to a suspension of all license
383 privileges under this chapter and chapter 372 for a period not
384 exceeding 6 months.
385 4. A third violation within 1 year after a second
386 violation is a felony of the third degree, punishable as
387 provided in s. 775.082 or s. 775.083, with a mandatory minimum
388 term of imprisonment of 1 year, and such commercial harvester
389 ~~person~~ shall also be assessed a civil penalty of $5,000 and all
390 license privileges under this chapter and chapter 372 shall be
391 permanently revoked.
392 5. A fourth or subsequent violation is a felony of the
393 third degree, punishable as provided in s. 775.082 or s.
394 775.083, with a mandatory minimum term of imprisonment of 1
395 year, and such commercial harvester ~~person~~ shall also be
396 assessed a mandatory civil penalty of $5,000 and all license
397 privileges under this chapter and chapter 372 shall be
398 permanently revoked.
399
400 For purposes of this subsection, a violation means any judicial
401 disposition other than acquittal or dismissal.
402 (12) LICENSES AND ENTITIES SUBJECT TO PENALTIES.--For
403 purposes of imposing license or permit suspensions or
404 revocations authorized by this chapter, the license or permit
405 under which the violation was committed is subject to suspension
406 or revocation by the commission. For purposes of assessing
407 monetary civil or administrative penalties authorized by this

408 chapter, the commercial harvester ~~person, firm, or corporation~~
409 cited and subsequently receiving a judicial disposition of other
410 than dismissal or acquittal in a court of law is subject to the
411 monetary penalty assessment by the commission. However, if the
412 license or permitholder of record is not the commercial
413 harvester ~~person, firm, or corporation~~ receiving the citation
414 and judicial disposition, the license or permit may be suspended
415 or revoked only after the license or permitholder has been
416 notified by the commission that the license or permit has been
417 cited in a major violation and is now subject to suspension or
418 revocation should the license or permit be cited for subsequent
419 major violations.
420 Section 3. Section 370.028, Florida Statutes, is amended
421 to read:
422 370.028 Enforcement of commission rules; penalties for
423 violation of rule.--Rules of the Fish and Wildlife Conservation
424 Commission shall be enforced by any law enforcement officer
425 certified pursuant to s. 943.13. Except as provided under s.
426 372.83, any person who violates or otherwise fails to comply
427 with any rule adopted by the commission shall be punished
428 pursuant to s. 370.021(1).
429 Section 4. Paragraph (d) of subsection (5) of section
430 370.061, Florida Statutes, is amended to read:
431 370.061 Confiscation, seizure, and forfeiture of property
432 and products.--
433 (5) CONFISCATION AND SALE OF PERISHABLE SALTWATER
434 PRODUCTS; PROCEDURE.--

435 (d) For purposes of confiscation under this subsection,
436 the term "saltwater products" has the meaning set out in s.
437 370.01(27) ~~(26)~~, except that the term does not include saltwater
438 products harvested under the authority of a recreational license
439 unless the amount of such harvested products exceeds three times
440 the applicable recreational bag limit for trout, snook, or
441 redfish.
442 Section 5. Subsection (8) is added to section 370.063,
443 Florida Statutes, to read:
444 370.063 Special recreational crawfish license.--There is
445 created a special recreational crawfish license, to be issued to
446 qualified persons as provided by this section for the
447 recreational harvest of crawfish (spiny lobster) beginning
448 August 5, 1994.
449 (8) Any person who violates this section commits a Level
450 One violation under s. 372.83.
451 Section 6. Subsection (8) is added to section 370.08,
452 Florida Statutes, to read:
453 370.08 Fishers and equipment; regulation.--
454 (8) PENALTIES.--A commercial harvester who violates this
455 section shall be punished under s. 370.021. Any other person who
456 violates this section commits a Level Two violation under s.
457 372.83.
458 Section 7. Subsection (6) is added to section 370.081,
459 Florida Statutes, to read:
460 370.081 Illegal importation or possession of nonindigenous
461 marine plants and animals; rules and regulations.--

462 (6) Any person who violates this section commits a Level
463 Three violation under s. 372.83.
464 Section 8. Subsection (4) is added to section 370.1105,
465 Florida Statutes, to read:
466 370.1105 Saltwater finfish; fishing traps regulated.--
467 (4) A commercial harvester who violates this section shall
468 be punished under s. 370.021. Any other person who violates this
469 section commits a Level Two violation under s. 372.83.
470 Section 9. Subsection (3) is added to section 370.1121,
471 Florida Statutes, to read:
472 370.1121 Bonefish; regulation.--
473 (3) A commercial harvester or wholesale or retail
474 saltwater products dealer who violates this section shall be
475 punished under s. 370.021. Any other person who violates this
476 section commits a Level Two violation under s. 372.83.
477 Section 10. Paragraphs (a), (b), (c), and (d) of
478 subsection (2) of section 370.13, Florida Statutes, are amended
479 to read:
480 370.13 Stone crab; regulation.--
481 (2) PENALTIES.--For purposes of this subsection,
482 conviction is any disposition other than acquittal or dismissal,
483 regardless of whether the violation was adjudicated under any
484 state or federal law.
485 (a) It is unlawful to violate commission rules regulating
486 stone crab trap certificates and trap tags. No person may use an
487 expired tag or a stone crab trap tag not issued by the
488 commission or possess or use a stone crab trap in or on state

489 waters or adjacent federal waters without having a trap tag
490 required by the commission firmly attached thereto.
491 1. In addition to any other penalties provided in s.
492 370.021, for any commercial harvester who violates this
493 paragraph, ~~person, firm, or corporation who violates rule 68B-~~
494 ~~13.010(2), Florida Administrative Code, or rule 68B-13.011(5),~~
495 ~~(6), (7), (8), or (11), Florida Administrative Code,~~ the
496 following administrative penalties apply.
497 a.~~1.~~ For a first violation, the commission shall assess an
498 administrative penalty of up to $1,000 and the stone crab
499 endorsement under which the violation was committed may be
500 suspended for the remainder of the current license year.
501 b.~~2.~~ For a second violation that occurs within 24 months
502 of any previous such violation, the commission shall assess an
503 administrative penalty of up to $2,000 and the stone crab
504 endorsement under which the violation was committed may be
505 suspended for 12 calendar months.
506 c.~~3.~~ For a third violation that occurs within 36 months of
507 any previous two such violations, the commission shall assess an
508 administrative penalty of up to $5,000 and the stone crab
509 endorsement under which the violation was committed may be
510 suspended for 24 calendar months.
511 d.~~4.~~ A fourth violation that occurs within 48 months of
512 any three previous such violations, shall result in permanent
513 revocation of all of the violator's saltwater fishing
514 privileges, including having the commission proceed against the
515 endorsement holder's saltwater products license in accordance
516 with s. 370.021.

517 2. Any other person who violates the provisions of this
518 paragraph commits a Level Two violation under s. 372.83.
519
520 Any commercial harvester ~~person~~ assessed an administrative
521 penalty under this paragraph shall, within 30 calendar days
522 after notification, pay the administrative penalty to the
523 commission, or request an administrative hearing under ss.
524 120.569 and 120.57. The proceeds of all administrative penalties
525 collected under this paragraph shall be deposited in the Marine
526 Resources Conservation Trust Fund.
527 (b) It is unlawful for any commercial harvester ~~person~~ to
528 remove the contents of another harvester's trap or take
529 possession of such without the express written consent of the
530 trap owner available for immediate inspection. Unauthorized
531 possession of another's trap gear or removal of trap contents
532 constitutes theft.
533 1. Any commercial harvester ~~person~~ convicted of theft of
534 or from a trap pursuant to this subsection or s. 370.1107 shall,
535 in addition to the penalties specified in s. 370.021 and the
536 provisions of this section, permanently lose all ~~his or her~~
537 saltwater fishing privileges, including saltwater products
538 licenses, stone crab or incidental take endorsements, and all
539 trap certificates allotted to such commercial harvester ~~him or~~
540 ~~her~~ by the commission. In such cases, trap certificates and
541 endorsements are nontransferable.
542 2. In addition, any commercial harvester ~~person, firm, or~~
543 ~~corporation~~ convicted of violating the prohibitions referenced
544 in this paragraph shall also be assessed an administrative

545 penalty of up to $5,000. Immediately upon receiving a citation
546 for a violation involving theft of or from a trap and until
547 adjudicated for such a violation, or, upon receipt of a judicial
548 disposition other than dismissal or acquittal on such a
549 violation, the violator is prohibited from transferring any
550 stone crab or lobster certificates.
551 3. Any other person who violates the provisions of this
552 paragraph commits a Level Two violation under s. 372.83.
553 (c)1. It is unlawful to violate ~~Any person, firm, or~~
554 ~~corporation convicted of violating~~ commission rules that
555 prohibit any of the following:~~, commits a felony of the third~~
556 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
557 ~~775.084.~~
558 a.~~1.~~ The willful molestation of any stone crab trap, line,
559 or buoy that is the property of any licenseholder, without the
560 permission of that licenseholder.
561 b.~~2.~~ The bartering, trading, or sale, or conspiring or
562 aiding in such barter, trade, or sale, or supplying, agreeing to
563 supply, aiding in supplying, or giving away stone crab trap tags
564 or certificates unless the action is duly authorized by the
565 commission as provided by commission rules.
566 c.~~3.~~ The making, altering, forging, counterfeiting, or
567 reproducing of stone crab trap tags.
568 d.~~4.~~ Possession of forged, counterfeit, or imitation stone
569 crab trap tags.
570 e.~~5.~~ Engaging in the commercial harvest of stone crabs
571 during the time either of the endorsements is under suspension
572 or revocation.

573 2. Any commercial harvester who violates this paragraph
574 commits a felony of the third degree, punishable as provided in
575 s. 775.082, s. 775.083, or s. 775.084.
576 3. Any other person who violates this paragraph commits a
577 Level Four violation under s. 372.83.
578
579 In addition, any commercial harvester ~~person, firm, or~~
580 ~~corporation~~ convicted of violating this paragraph shall also be
581 assessed an administrative penalty of up to $5,000, and the
582 incidental take endorsement and/or the stone crab endorsement
583 under which the violation was committed may be suspended for up
584 to 24 calendar months. Immediately upon receiving a citation
585 involving a violation of this paragraph and until adjudicated
586 for such a violation, or if convicted of such a violation, the
587 person, firm, or corporation committing the violation is
588 prohibited from transferring any stone crab certificates or
589 endorsements.
590 (d) For any commercial harvester ~~person, firm, or~~
591 ~~corporation~~ convicted of fraudulently reporting the actual value
592 of transferred stone crab certificates, the commission may
593 automatically suspend or permanently revoke the seller's or the
594 purchaser's stone crab endorsements. If the endorsement is
595 permanently revoked, the commission shall also permanently
596 deactivate the endorsement holder's stone crab certificate
597 accounts. Whether an endorsement is suspended or revoked, the
598 commission may also levy a fine against the holder of the
599 endorsement of up to twice the appropriate surcharge to be paid
600 based on the fair market value of the transferred certificates.

601 Section 11. Subsection (1) of section 370.135, Florida
602 Statutes, is amended to read:
603 370.135 Blue crab; regulation.--
604 (1)(a) No commercial harvester ~~person, firm, or~~
605 ~~corporation~~ shall transport on the water, fish with or cause to
606 be fished with, set, or place any trap designed for taking blue
607 crabs unless such commercial harvester ~~person, firm, or~~
608 ~~corporation~~ is the holder of a valid saltwater products license
609 issued pursuant to s. 370.06 and the trap has a current state
610 number permanently attached to the buoy. The trap number shall
611 be affixed in legible figures at least 1 inch high on each buoy
612 used. The saltwater products license must be on board the boat,
613 and both the license and the crabs shall be subject to
614 inspection at all times. Only one trap number may be issued for
615 each boat by the commission upon receipt of an application on
616 forms prescribed by it. This subsection shall not apply to an
617 individual fishing with no more than five traps.
618 (b) It is unlawful ~~a felony of the third degree,~~
619 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084,~~
620 for any person willfully to molest any traps, lines, or buoys,
621 as defined herein, belonging to another without the express
622 written consent of the trap owner.
623 1. A commercial harvester who violates this paragraph
624 commits a felony of the third degree, punishable as provided in
625 s. 775.082, s. 775.083, or s. 775.084.
626 2. Any other person who violates this paragraph commits a
627 Level Four violation under s. 372.83.
628

629 Any commercial harvester ~~person~~ receiving a judicial disposition
630 other than dismissal or acquittal on a charge of willful
631 molestation of a trap, in addition to the penalties specified in
632 s. 370.021, shall lose all saltwater fishing privileges for a
633 period of 24 calendar months.
634 (c)1. It is unlawful for any person to remove the contents
635 of or take possession of another harvester's trap without the
636 express written consent of the trap owner available for
637 immediate inspection. Unauthorized possession of another's trap
638 gear or removal of trap contents constitutes theft.
639 a. Any commercial harvester ~~person~~ receiving a judicial
640 disposition other than dismissal or acquittal on a charge of
641 theft of or from a trap pursuant to this section or s. 370.1107
642 shall, in addition to the penalties specified in s. 370.021 and
643 the provisions of this section, permanently lose all ~~his or her~~
644 saltwater fishing privileges, including any ~~his or her~~ saltwater
645 products license and blue crab endorsement. In such cases
646 endorsements, landings history, and trap certificates are
647 nontransferable.
648 b. In addition, any commercial harvester ~~person, firm, or~~
649 ~~corporation~~ receiving a judicial disposition other than
650 dismissal or acquittal for violating this subsection or s.
651 370.1107 shall also be assessed an administrative penalty of up
652 to $5,000. Immediately upon receiving a citation for a violation
653 involving theft of or from a trap and until adjudicated for such
654 a violation, or receiving a judicial disposition other than
655 dismissal or acquittal for such a violation, the commercial
656 harvester ~~person, firm, or corporation~~ committing the violation

657 is prohibited from transferring any blue crab endorsements,
658 landings history, or trap certificates.
659 2. A commercial harvester who violates this paragraph
660 shall be punished under s. 370.021. Any other person who
661 violates this paragraph commits a Level Two violation under s.
662 372.83.
663 Section 12. Paragraph (a) of subsection (2) and subsection
664 (4) of section 370.14, Florida Statutes, are amended to read:
665 370.14 Crawfish; regulation.--
666 (2)(a)1. Each commercial harvester ~~person~~ taking or
667 attempting to take crawfish with a trap in commercial quantities
668 or for commercial purposes shall obtain and exhibit a crawfish
669 trap number, as required by the Fish and Wildlife Conservation
670 Commission. The annual fee for a crawfish trap number is $125.
671 This trap number may be issued by the commission upon the
672 receipt of application by the commercial harvester ~~person~~ when
673 accompanied by the payment of the fee. The design of the
674 applications and of the trap number shall be determined by the
675 commission. Any trap or device used in taking or attempting to
676 take crawfish, other than a trap with the trap number, shall be
677 seized and destroyed by the commission. The proceeds of the fees
678 imposed by this paragraph shall be deposited and used as
679 provided in paragraph (b). The commission may adopt rules to
680 carry out the intent of this section.
681 2. Each commercial harvester ~~person~~ taking or attempting
682 to take crawfish in commercial quantities or for commercial
683 purposes by any method, other than with a trap having a crawfish

684 trap number issued by the commission, must pay an annual fee of
685 $100.
686 (4)(a) It is unlawful ~~a felony of the third degree,~~
687 ~~punishable as provided in s. 775.082 or s. 775.083,~~ for any
688 person willfully to molest any crawfish traps, lines, or buoys
689 belonging to another without permission of the licenseholder.
690 (b) A commercial harvester who violates this subsection
691 commits a felony of the third degree, punishable as provided in
692 s. 775.082 or s. 775.083. Any other person who violates this
693 subsection commits a Level Four violation under s. 372.83.
694 Section 13. Paragraph (c) of subsection (2) of section
695 370.142, Florida Statutes, is amended to read:
696 370.142 Spiny lobster trap certificate program.--
697 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;
698 PENALTIES.--The Fish and Wildlife Conservation Commission shall
699 establish a trap certificate program for the spiny lobster
700 fishery of this state and shall be responsible for its
701 administration and enforcement as follows:
702 (c) Prohibitions; penalties.--
703 1. It is unlawful for a person to possess or use a spiny
704 lobster trap in or on state waters or adjacent federal waters
705 without having affixed thereto the trap tag required by this
706 section. It is unlawful for a person to possess or use any other
707 gear or device designed to attract and enclose or otherwise aid
708 in the taking of spiny lobster by trapping that is not a trap as
709 defined by rule of the commission ~~in rule 68B-24.006(2), Florida~~
710 ~~Administrative Code~~.

711 2. It is unlawful for a person to possess or use spiny
712 lobster trap tags without having the necessary number of
713 certificates on record as required by this section.
714 3. It is unlawful for any person to willfully molest, take
715 possession of, or remove the contents of another harvester's
716 trap without the express written consent of the trap owner
717 available for immediate inspection. Unauthorized possession of
718 another's trap gear or removal of trap contents constitutes
719 theft.
720 a. A commercial harvester who violates this subparagraph
721 shall be punished under ss. 370.021 and 370.14. Any commercial
722 harvester ~~person~~ receiving a judicial disposition other than
723 dismissal or acquittal on a charge of theft of or from a trap
724 pursuant to this subparagraph or s. 370.1107 shall, in addition
725 to the penalties specified in ss. 370.021 and 370.14 and the
726 provisions of this section, permanently lose all his or her
727 saltwater fishing privileges, including his or her saltwater
728 products license, crawfish endorsement, and all trap
729 certificates allotted to him or her through this program. In
730 such cases, trap certificates and endorsements are
731 nontransferable.
732 b. Any commercial harvester ~~person~~ receiving a judicial
733 disposition other than dismissal or acquittal on a charge of
734 willful molestation of a trap, in addition to the penalties
735 specified in ss. 370.021 and 370.14, shall lose all saltwater
736 fishing privileges for a period of 24 calendar months.
737 c. In addition, any commercial harvester ~~person, firm, or~~
738 ~~corporation~~ charged with violating this paragraph and receiving

739 a judicial disposition other than dismissal or acquittal for
740 violating this subparagraph or s. 370.1107 shall also be
741 assessed an administrative penalty of up to $5,000.
742
743 Immediately upon receiving a citation for a violation involving
744 theft of or from a trap, or molestation of a trap, and until
745 adjudicated for such a violation or, upon receipt of a judicial
746 disposition other than dismissal or acquittal of such a
747 violation, the person, firm, or corporation committing the
748 violation is prohibited from transferring any crawfish trap
749 certificates and endorsements.
750 4. In addition to any other penalties provided in s.
751 370.021, a commercial harvester~~, as defined by rule 68B-~~
752 ~~24.002(1), Florida Administrative Code,~~ who violates the
753 provisions of this section~~,~~ or commission rules ~~the provisions~~
754 relating to traps ~~of chapter 68B-24, Florida Administrative~~
755 ~~Code,~~ shall be punished as follows:
756 a. If the first violation is for violation of subparagraph
757 1. or subparagraph 2., the commission shall assess an additional
758 administrative ~~civil~~ penalty of up to $1,000 and the crawfish
759 trap number issued pursuant to s. 370.14(2) or (6) may be
760 suspended for the remainder of the current license year. For all
761 other first violations, the commission shall assess an
762 additional administrative ~~civil~~ penalty of up to $500.
763 b. For a second violation of subparagraph 1. or
764 subparagraph 2. which occurs within 24 months of any previous
765 such violation, the commission shall assess an additional
766 administrative ~~civil~~ penalty of up to $2,000 and the crawfish

767 trap number issued pursuant to s. 370.14(2) or (6) may be
768 suspended for the remainder of the current license year.
769 c. For a third or subsequent violation of subparagraph 1.,
770 subparagraph 2., or subparagraph 3. which occurs within 36
771 months of any previous two such violations, the commission shall
772 assess an additional administrative ~~civil~~ penalty of up to
773 $5,000 and may suspend the crawfish trap number issued pursuant
774 to s. 370.14(2) or (6) for a period of up to 24 months or may
775 revoke the crawfish trap number and, if revoking the crawfish
776 trap number, may also proceed against the licenseholder's
777 saltwater products license in accordance with the provisions of
778 s. 370.021(2)(h).
779 d. Any person assessed an additional administrative ~~civil~~
780 penalty pursuant to this section shall within 30 calendar days
781 after notification:
782 (I) Pay the administrative ~~civil~~ penalty to the
783 commission; or
784 (II) Request an administrative hearing pursuant to the
785 provisions of s. 120.60.
786 e. The commission shall suspend the crawfish trap number
787 issued pursuant to s. 370.14(2) or (6) for any person failing to
788 comply with the provisions of sub-subparagraph d.
789 5.a. It is unlawful for any person to make, alter, forge,
790 counterfeit, or reproduce a spiny lobster trap tag or
791 certificate.
792 b. It is unlawful for any person to knowingly have in his
793 or her possession a forged, counterfeit, or imitation spiny
794 lobster trap tag or certificate.

795 c. It is unlawful for any person to barter, trade, sell,
796 supply, agree to supply, aid in supplying, or give away a spiny
797 lobster trap tag or certificate or to conspire to barter, trade,
798 sell, supply, aid in supplying, or give away a spiny lobster
799 trap tag or certificate unless such action is duly authorized by
800 the commission as provided in this chapter or in the rules of
801 the commission.
802 6.a. Any commercial harvester ~~person~~ who violates the
803 provisions of subparagraph 5., or any commercial harvester
804 ~~person~~ who engages in the commercial harvest, trapping, or
805 possession of spiny lobster without a crawfish trap number as
806 required by s. 370.14(2) or (6) or during any period while such
807 crawfish trap number is under suspension or revocation, commits
808 a felony of the third degree, punishable as provided in s.
809 775.082, s. 775.083, or s. 775.084.
810 b. In addition to any penalty imposed pursuant to sub-
811 subparagraph a., the commission shall levy a fine of up to twice
812 the amount of the appropriate surcharge to be paid on the fair
813 market value of the transferred certificates, as provided in
814 subparagraph (a)1., on any commercial harvester ~~person~~ who
815 violates the provisions of sub-subparagraph 5.c.
816 c. Any other person who violates the provisions of
817 subparagraph 5. commits a Level Four violation under s. 372.83.
818 7. Any certificates for which the annual certificate fee
819 is not paid for a period of 3 years shall be considered
820 abandoned and shall revert to the commission. During any period
821 of trap reduction, any certificates reverting to the commission
822 shall become permanently unavailable and be considered in that

823 amount to be reduced during the next license-year period.
824 Otherwise, any certificates that revert to the commission are to
825 be reallotted in such manner as provided by the commission.
826 8. The proceeds of all civil penalties collected pursuant
827 to subparagraph 4. and all fines collected pursuant to sub-
828 subparagraph 6.b. shall be deposited into the Marine Resources
829 Conservation Trust Fund.
830 9. All traps shall be removed from the water during any
831 period of suspension or revocation.
832 10. Except as otherwise provided, any person who violates
833 this paragraph commits a Level Two violation under s. 372.83.
834 Section 14. Subsections (4), (8), (11), and (12) of
835 section 372.57, Florida Statutes, are amended, and subsections
836 (16) and (17) are added to that section, to read:
837 372.57 Recreational licenses, permits, and authorization
838 numbers; fees established.--
839 (4) RESIDENT HUNTING AND FISHING LICENSES.--The licenses
840 and fees for residents participating in hunting and fishing
841 activities in this state are as follows:
842 (a) Annual freshwater fishing license, $12.
843 (b) Annual saltwater fishing license, $12.
844 (c) Annual hunting license to take game, $11.
845 (d) Annual combination hunting and freshwater fishing
846 license, $22.
847 (e) Annual combination freshwater fishing and saltwater
848 fishing license, $24.
849 (f) Annual combination hunting, freshwater fishing, and
850 saltwater fishing license, $34.

851 (g) Annual license to take fur-bearing animals, $25.
852 However, a resident with a valid hunting license or a no-cost
853 license who is taking fur-bearing animals for noncommercial
854 purposes using guns or dogs only, and not traps or other
855 devices, is not required to purchase this license. Also, a
856 resident 65 years of age or older is not required to purchase
857 this license.
858 (h) Annual sportsman's license, $71 ~~$66~~, except that an
859 annual sportsman's license for a resident 64 years of age or
860 older is $12. A sportsman's license authorizes the person to
861 whom it is issued to take game and freshwater fish, subject to
862 the state and federal laws, rules, and regulations, including
863 rules of the commission, in effect at the time of the taking.
864 Other authorized activities include activities authorized by a
865 management area permit, a muzzle-loading gun season permit, a
866 crossbow season permit, a turkey permit, a Florida waterfowl
867 permit, and an archery season permit.
868 (i) Annual gold sportsman's license, $87 ~~$82~~. The gold
869 sportsman's license authorizes the person to whom it is issued
870 to take freshwater fish, saltwater fish, and game, subject to
871 the state and federal laws, rules, and regulations, including
872 rules of the commission, in effect at the time of taking. Other
873 authorized activities include activities authorized by a
874 management area permit, a muzzle-loading gun season permit, a
875 crossbow season permit, a turkey permit, a Florida waterfowl
876 permit, an archery season permit, a snook permit, and a crawfish
877 permit.

878 (j) Annual military gold sportsman's license, $18.50. The
879 gold sportsman's license authorizes the person to whom it is
880 issued to take freshwater fish, saltwater fish, and game,
881 subject to the state and federal laws, rules, and regulations,
882 including rules of the commission, in effect at the time of
883 taking. Other authorized activities include activities
884 authorized by a management area permit, a muzzle-loading gun
885 season permit, a crossbow season permit, a turkey permit, a
886 Florida waterfowl permit, an archery season permit, a snook
887 permit, and a crawfish permit. Any resident who is an active or
888 retired member of the United States Armed Forces, the United
889 States Armed Forces Reserve, the National Guard, the United
890 States Coast Guard, or the United States Coast Guard Reserve is
891 eligible to purchase the military gold sportsman's license upon
892 submission of a current military identification card.
893 (8) SPECIFIED HUNTING, FISHING, AND RECREATIONAL ACTIVITY
894 PERMITS.--In addition to any license required under this
895 chapter, the following permits and fees for specified hunting,
896 fishing, and recreational uses and activities are required:
897 (a) An annual Florida waterfowl permit for a resident or
898 nonresident to take wild ducks or geese within the state or its
899 coastal waters is $3.
900 (b)1. An annual Florida turkey permit for a resident to
901 take wild turkeys within the state is $5.
902 2. An annual Florida turkey permit for a nonresident to
903 take wild turkeys within the state is $100.
904 (c) An annual snook permit for a resident or nonresident
905 to take or possess any snook from any waters of the state is $2.

906 Revenue generated from the sale of snook permits shall be used
907 exclusively for programs to benefit the snook population.
908 (d) An annual crawfish permit for a resident or
909 nonresident to take or possess any crawfish for recreational
910 purposes from any waters of the state is $2. Revenue generated
911 from the sale of crawfish permits shall be used exclusively for
912 programs to benefit the crawfish population.
913 (e) A $5 fee is imposed for each of the following permits:
914 1. An annual archery season permit for a resident or
915 nonresident to hunt within the state during any archery season
916 authorized by the commission.
917 2. An annual crossbow season permit for a resident or
918 nonresident to hunt within the state during any crossbow season
919 authorized by the commission.
920 3. An annual muzzle-loading gun season permit for a
921 resident or nonresident to hunt within the state during any ~~with~~
922 ~~a~~ muzzle-loading gun season ~~is $5. Hunting with a muzzle-loading~~
923 ~~gun is limited to game seasons in which hunting with a modern~~
924 ~~firearm is not~~ authorized by the commission.
925 ~~(f) An annual archery permit for a resident or nonresident~~
926 ~~to hunt within the state with a bow and arrow is $5. Hunting~~
927 ~~with an archery permit is limited to those game seasons in which~~
928 ~~hunting with a firearm is not authorized by the commission.~~
929 (f) ~~(g)~~ A special use permit for a resident or nonresident
930 to participate in limited entry hunting or fishing activities as
931 authorized by commission rule shall not exceed $100 per day or
932 $250 per week. Notwithstanding any other provision of this
933 chapter, there are no exclusions, exceptions, or exemptions from

934 this permit fee. In addition to the permit fee, the commission
935 may charge each special use permit applicant a nonrefundable
936 application fee not to exceed $10.
937 (g) ~~(h)~~1. A management area permit for a resident or
938 nonresident to hunt on, fish on, or otherwise use for outdoor
939 recreational purposes land owned, leased, or managed by the
940 commission, or by the state for the use and benefit of the
941 commission, shall not exceed $25 per year.
942 2. Permit fees for short-term use of land that is owned,
943 leased, or managed by the commission may be established by rule
944 of the commission for activities on such lands. Such permits may
945 be in lieu of, or in addition to, the annual management area
946 permit authorized in subparagraph 1.
947 3. Other than for hunting or fishing, the provisions of
948 this paragraph shall not apply on any lands not owned by the
949 commission, unless the commission has obtained the written
950 consent of the owner or primary custodian of such lands.
951 (h) ~~(i)~~1. A recreational user permit is required to hunt
952 on, fish on, or otherwise use for outdoor recreational purposes
953 land leased by the commission from private nongovernmental
954 owners, except for those lands located directly north of the
955 Apalachicola National Forest, east of the Ochlocknee River until
956 the point the river meets the dam forming Lake Talquin, and
957 south of the closest federal highway. The fee for a recreational
958 user permit shall be based upon the economic compensation
959 desired by the landowner, game population levels, desired hunter
960 density, and administrative costs. The permit fee shall be set
961 by commission rule on a per-acre basis. The recreational user

962 permit fee, less administrative costs of up to $25 per permit,
963 shall be remitted to the landowner as provided in the lease
964 agreement for each area.
965 2. One minor dependent, 16 years of age or younger, may
966 hunt under the supervision of the permittee and is exempt from
967 the recreational user permit requirements. The spouse and
968 dependent children of a permittee are exempt from the
969 recreational user permit requirements when engaged in outdoor
970 recreational activities other than hunting and when accompanied
971 by a permittee. Notwithstanding any other provision of this
972 chapter, no other exclusions, exceptions, or exemptions from the
973 recreational user permit fee are authorized.
974 (11) RESIDENT LIFETIME HUNTING LICENSES.--
975 (a) Lifetime hunting licenses are available to residents
976 only, as follows, for:
977 1. Persons 4 years of age or younger, for a fee of $200.
978 2. Persons 5 years of age or older, but under 13 years of
979 age, for a fee of $350.
980 3. Persons 13 years of age or older, for a fee of $500.
981 (b) The following activities are authorized by the
982 purchase of a lifetime hunting license:
983 1. Taking, or attempting to take or possess, game
984 consistent with the state and federal laws and regulations and
985 rules of the commission in effect at the time of the taking.
986 2. All activities authorized by a muzzle-loading gun
987 season permit, a crossbow season permit, a turkey permit, an
988 archery season permit, a Florida waterfowl permit, and a
989 management area permit, excluding fishing.

990 (12) RESIDENT LIFETIME SPORTSMAN'S LICENSES.--
991 (a) Lifetime sportsman's licenses are available to
992 residents only, as follows, for:
993 1. Persons 4 years of age or younger, for a fee of $400.
994 2. Persons 5 years of age or older, but under 13 years of
995 age, for a fee of $700.
996 3. Persons 13 years of age or older, for a fee of $1,000.
997 (b) The following activities are authorized by the
998 purchase of a lifetime sportsman's license:
999 1. Taking, or attempting to take or possess, freshwater
1000 and saltwater fish, and game, consistent with the state and
1001 federal laws and regulations and rules of the commission in
1002 effect at the time of taking.
1003 2. All activities authorized by a management area permit,
1004 a muzzle-loading gun season permit, a crossbow season permit, a
1005 turkey permit, an archery season permit, a Florida waterfowl
1006 permit, a snook permit, and a crawfish permit.
1007 (16) PROHIBITED LICENSES OR PERMITS.--A person may not
1008 make, forge, or counterfeit a license or permit required under
1009 this section, except for those persons authorized by the
1010 commission to make or reproduce such a license or permit. A
1011 person may not knowingly possess a forgery, counterfeit, or
1012 unauthorized reproduction of such a license or permit. A person
1013 who violates this subsection commits a Level Four violation
1014 under s. 372.83.
1015 (17) SUSPENDED OR REVOKED LICENSES.--A person may not take
1016 game, freshwater fish, saltwater fish, or fur-bearing animals
1017 within this state if a license issued to such person as required

1018 under this section or a privilege granted to such person under
1019 s. 372.562 is suspended or revoked. A person who violates this
1020 subsection commits a Level Three violation under s. 372.83.
1021 Section 15. Subsection (5) of section 372.5704, Florida
1022 Statutes, is amended to read:
1023 372.5704 Fish and Wildlife Conservation Commission license
1024 program for tarpon; fees; penalties.--
1025 (5) Any individual including a taxidermist who possesses a
1026 tarpon which does not have a tag securely attached as required
1027 by this section commits a Level Two violation under s. 372.83
1028 ~~shall be subject to penalties as prescribed in s. 370.021~~.
1029 Provided, however, a taxidermist may remove the tag during the
1030 process of mounting a tarpon. The removed tag shall remain with
1031 the fish during any subsequent storage or shipment.
1032 Section 16. Section 372.571, Florida Statutes, is amended
1033 to read:
1034 372.571 Expiration of licenses and permits.--Each license
1035 or permit issued under this chapter must be dated when issued.
1036 Each license or permit issued under this chapter remains valid
1037 for 12 months after the date of issuance, except for a lifetime
1038 license issued pursuant to s. 372.57 which is valid from the
1039 date of issuance until the death of the individual to whom the
1040 license is issued unless otherwise revoked in accordance with s.
1041 372.99, or a 5-year license issued pursuant to s. 372.57 which
1042 is valid for 5 consecutive years from the date of purchase
1043 unless otherwise revoked in accordance with s. 372.99, or a
1044 license issued pursuant to s. 372.57(5)(a), (b), (c), or (f) or
1045 (8)(f) ~~(8)(g)~~ or (g)2.~~(h)2.~~, which is valid for the period

1046 specified on the license. A resident lifetime license or a
1047 resident 5-year license that has been purchased by a resident of
1048 this state and who subsequently resides in another state shall
1049 be honored for activities authorized by that license.
1050 Section 17. Section 372.5717, Florida Statutes, is amended
1051 to read:
1052 372.5717 Hunter safety course; requirements; penalty.--
1053 (1) This section may be cited as the Senator Joe Carlucci
1054 Hunter Safety Act.
1055 (2)(a) Except as provided in paragraph (b), a person born
1056 on or after June 1, 1975, may not be issued a license to take
1057 wild animal life with the use of a firearm, gun, bow, or
1058 crossbow in this state without having first successfully
1059 completed a hunter safety course as provided in this section,
1060 and without having in his or her personal possession a hunter
1061 safety certification card, as provided in this section.
1062 (b) A person born on or after June 1, 1975, who has not
1063 successfully completed a hunter safety course may apply to the
1064 commission for a special authorization to hunt under
1065 supervision. The special authorization for supervised hunting
1066 shall be designated on any license or permit required under this
1067 chapter for a person to take game or fur-bearing animals and
1068 shall be valid for not more than 1 year. A special authorization
1069 for supervised hunting may not be issued more than once to the
1070 person applying for such authorization. A person issued a
1071 license with a special authorization to hunt under supervision
1072 must hunt under the supervision of, and in the presence of, a
1073 person 21 years of age or older who is licensed to hunt under s.

1074 372.57 or who is exempt from licensing requirements or eligible
1075 for a free license under s. 372.562.
1076 (3) The Fish and Wildlife Conservation Commission shall
1077 institute and coordinate a statewide hunter safety course that
1078 ~~which~~ must be offered in every county and consist of not ~~less~~
1079 ~~than 12 hours nor~~ more than 16 hours of instruction including,
1080 but not limited to, instruction in the competent and safe
1081 handling of firearms, conservation, and hunting ethics.
1082 (4) The commission shall issue a permanent hunter safety
1083 certification card to each person who successfully completes the
1084 hunter safety course. The commission shall maintain records of
1085 hunter safety certification cards issued and shall establish
1086 procedures for replacing lost or destroyed cards.
1087 (5) A hunter safety certification card issued by a
1088 wildlife agency of another state, or any Canadian province,
1089 which shows that the holder of the card has successfully
1090 completed a hunter safety course approved by the commission is
1091 an acceptable substitute for the hunter safety certification
1092 card issued by the commission.
1093 (6) All persons subject to the requirements of subsection
1094 (2) must have in their personal possession, proof of compliance
1095 with this section, while taking or attempting to take wildlife
1096 with the use of a firearm, gun, bow, or crossbow and must,
1097 unless the requirement to complete a hunter safety course is
1098 deferred under this section, display a valid hunter safety
1099 certification card ~~to county tax collectors or their subagents~~
1100 in order to purchase a Florida hunting license. After the
1101 issuance of such a license, the license itself shall serve as

1102 proof of compliance with this section. A holder of a lifetime
1103 license whose license does not indicate on the face of the
1104 license that a hunter safety course has been completed must have
1105 in his or her personal possession a hunter safety certification
1106 card, as provided by this section, while attempting to take wild
1107 animal life with the use of a firearm, gun, bow, or crossbow.
1108 (7) The hunter safety requirements of this section do not
1109 apply to persons for whom licenses are not required under s.
1110 372.562(2).
1111 (8) A person who violates this section shall be cited for
1112 a Level One violation under s. 372.83 and shall be punished
1113 ~~noncriminal infraction, punishable~~ as provided in s. 372.83 ~~s.~~
1114 ~~372.711~~.
1115 Section 18. Section 372.573, Florida Statutes, is amended
1116 to read:
1117 372.573 Management area permit revenues.--The commission
1118 shall expend the revenue generated from the sale of the
1119 management area permit as provided for in s. 372.57(8)(g) ~~s.~~
1120 ~~372.57(8)(h)~~ or that pro rata portion of any license that
1121 includes management area privileges as provided for in s.
1122 372.57(4)(h), (i), and (j) for the lease, management, and
1123 protection of lands for public hunting, fishing, and other
1124 outdoor recreation.
1125 Section 19. Section 372.83, Florida Statutes, is amended
1126 to read:
1127 (Substantial rewording of section. See
1128 s. 372.83, F.S., for present text.)

1129 372.83 Penalties and violations; civil penalties for
1130 noncriminal infractions; criminal penalties; suspension and
1131 forfeiture of licenses and permits.--
1132 (1)(a) LEVEL ONE VIOLATIONS.--A person commits a Level One
1133 violation if he or she violates any of the following provisions:
1134 1. Rules or orders of the commission relating to the
1135 filing of reports or other documents required to be filed by
1136 persons who hold recreational licenses and permits issued by the
1137 commission.
1138 2. Rules or orders of the commission relating to quota
1139 hunt permits, daily use permits, hunting zone assignments,
1140 camping, alcoholic beverages, vehicles, and check stations
1141 within wildlife management areas or other areas managed by the
1142 commission.
1143 3. Rules or orders of the commission relating to daily use
1144 permits, alcoholic beverages, swimming, possession of firearms,
1145 operation of vehicles, and watercraft speed within fish
1146 management areas managed by the commission.
1147 4. Rules or orders of the commission relating to vessel
1148 size or specifying motor restrictions on specified water bodies.
1149 5. Section 370.063, providing for special recreational
1150 crawfish licenses.
1151 6. Subsections (1) through (15) of s. 372.57, providing
1152 for recreational licenses to hunt, fish, and trap.
1153 7. Section 372.5717, providing hunter safety course
1154 requirements.
1155 8. Section 372.988, prohibiting deer hunting unless
1156 required clothing is worn.

1157 (b) A person who commits a Level One violation commits a
1158 noncriminal infraction and shall be cited to appear before the
1159 county court.
1160 (c)1. The civil penalty for committing a Level One
1161 violation involving the license and permit requirements of s.
1162 372.57 is $50, plus the cost of the license or permit if the
1163 person cited has not previously committed a Level One violation.
1164 2. The civil penalty for committing a Level One violation
1165 involving the license and permit requirements of s. 372.57 is
1166 $250, plus the cost of the license or permit if the person cited
1167 has previously committed a Level One violation.
1168 (d)1. The civil penalty for any other Level One violation
1169 is $50 if the person cited has not previously committed a Level
1170 One violation.
1171 2. The civil penalty for any other Level One violation is
1172 $250 if the person cited has previously committed a Level One
1173 violation.
1174 (e) A person cited for a Level One violation shall sign
1175 and accept a citation to appear before the county court. The
1176 issuing officer may indicate on the citation the time and
1177 location of the scheduled hearing and shall indicate the
1178 applicable civil penalty.
1179 (f) A person cited for a Level One violation may pay the
1180 civil penalty by mail or in person within 30 days after receipt
1181 of the citation. If the civil penalty is paid, the person shall
1182 be deemed to have admitted committing the Level One violation
1183 and to have waived his or her right to a hearing before the
1184 county court. Such admission may not be used as evidence in any

1185 other proceedings except to determine the appropriate fine for
1186 any subsequent violations.
1187 (g) A person who refuses to accept a citation, who fails
1188 to pay the civil penalty for a Level One violation, or who fails
1189 to appear before a county court as required commits a
1190 misdemeanor of the second degree, punishable as provided in s.
1191 775.082 or s. 775.083.
1192 (h) A person who elects to appear before the county court
1193 or who is required to appear before the county court shall be
1194 deemed to have waived the limitations on civil penalties
1195 provided under paragraph (c). After a hearing, the county court
1196 shall determine if a Level One violation has been committed and,
1197 if so, may impose a civil penalty of not less than $50 for a
1198 first-time violation and not more than $500 for subsequent
1199 violations. A person found guilty of committing a Level One
1200 violation may appeal that finding to the circuit court. The
1201 commission of a violation must be proved beyond a reasonable
1202 doubt.
1203 (i) A person cited for violating the requirements of s.
1204 372.57 relating to personal possession of a license or permit
1205 may not be convicted if, prior to or at the time of a county
1206 court hearing, the person produces the required license or
1207 permit for verification by the hearing officer or the court
1208 clerk. The license or permit must have been valid at the time
1209 the person was cited. The clerk or hearing officer may assess a
1210 $5 fee for costs under this paragraph.
1211 (2)(a) LEVEL TWO VIOLATIONS.--A person commits a Level Two
1212 violation if he or she violates any of the following provisions:

1213 1. Rules or orders of the commission relating to season or
1214 time periods for the taking of wildlife, freshwater fish, or
1215 saltwater fish.
1216 2. Rules or orders of the commission establishing bag,
1217 possession, or size limits or restricting methods of taking
1218 wildlife, freshwater fish, or saltwater fish.
1219 3. Rules or orders of the commission prohibiting access or
1220 otherwise relating to access to wildlife management areas or
1221 other areas managed by the commission.
1222 4. Rules or orders of the commission relating to the
1223 feeding of wildlife, freshwater fish, or saltwater fish.
1224 5. Rules or orders of the commission relating to landing
1225 requirements for freshwater fish or saltwater fish.
1226 6. Rules or orders of the commission relating to
1227 restricted hunting areas, critical wildlife areas, or bird
1228 sanctuaries.
1229 7. Rules or orders of the commission relating to tagging
1230 requirements for game and fur-bearing animals.
1231 8. Rules or orders of the commission relating to the use
1232 of dogs for the taking of game.
1233 9. Rules or orders of the commission which are not
1234 otherwise classified.
1235 10. All prohibitions in chapter 370 which are not
1236 otherwise classified.
1237 11. Subsection 370.021(6), prohibiting the sale, purchase,
1238 harvest, or attempted harvest of any saltwater product with
1239 intent to sell.

1240 12. Section 370.028, prohibiting the violation of or
1241 noncompliance with commission rules.
1242 13. Section 370.08, prohibiting the obstruction of
1243 waterways with net gear.
1244 14. Section 370.1105, prohibiting the unlawful use of
1245 finfish traps.
1246 15. Section 370.1121, prohibiting the unlawful taking of
1247 bonefish.
1248 16. Paragraphs 370.13(2)(a) and (b), prohibiting the
1249 possession or use of stone crab traps without trap tags and
1250 theft of trap contents or gear.
1251 17. Paragraph 370.135(1)(c), prohibiting the theft of blue
1252 crab trap contents or trap gear.
1253 18. Paragraph 370.142(2)(c), prohibiting the possession or
1254 use of spiny lobster traps without trap tags or certificates and
1255 theft of trap contents or trap gear.
1256 19. Section 372.5704, prohibiting the possession of tarpon
1257 without purchasing a tarpon tag.
1258 20. Section 372.667, prohibiting the feeding or enticement
1259 of alligators or crocodiles.
1260 21. Section 372.705, prohibiting the intentional
1261 harassment of hunters, fishers, or trappers.
1262 (b)1. A person who commits a Level Two violation but who
1263 has not been convicted of a Level Two or higher violation within
1264 the past 3 years commits a misdemeanor of the second degree,
1265 punishable as provided in s. 775.082 or s. 775.083.
1266 2. Unless the stricter penalties in subparagraph 3. or
1267 subparagraph 4. apply, a person who commits a Level Two

1268 violation within 3 years after a previous conviction for a Level
1269 Two or higher violation commits a misdemeanor of the first
1270 degree, punishable as provided in s. 775.082 or s. 775.083, with
1271 a minimum mandatory fine of $250.
1272 3. Unless the stricter penalties in subparagraph 4. apply,
1273 a person who commits a Level Two violation within 5 years after
1274 two previous convictions for a Level Two or higher violation
1275 commits a misdemeanor of the first degree, punishable as
1276 provided in s. 775.082 or s. 775.083, with a minimum mandatory
1277 fine of $500 and a suspension of any recreational license or
1278 permit issued under s. 372.57 for 1 year. Such suspension shall
1279 include the suspension of the privilege to obtain such license
1280 or permit and the suspension of the ability to exercise any
1281 privilege granted under any exemption in s. 372.562.
1282 4. A person who commits a Level Two violation within 10
1283 years after three previous convictions for a Level Two or higher
1284 violation commits a misdemeanor of the first degree, punishable
1285 as provided in s. 775.082 or s. 775.083, with a minimum
1286 mandatory fine of $750 and a suspension of any recreational
1287 license or permit issued under s. 372.57 for 3 years. Such
1288 suspension shall include the suspension of the privilege to
1289 obtain such license or permit and the suspension of the ability
1290 to exercise any privilege granted under any exemption in s.
1291 372.562.
1292 (3)(a) LEVEL THREE VIOLATIONS.--A person commits a Level
1293 Three violation if he or she violates any of the following
1294 provisions:

1295 1. Rules or orders of the commission prohibiting the sale
1296 of saltwater fish.
1297 2. Subsection 370.021(2), establishing major violations.
1298 3. Subsection 370.021(4), prohibiting the possession of
1299 certain finfish in excess of recreational or commercial daily
1300 bag limits.
1301 4. Section 370.081, prohibiting the illegal importation or
1302 possession of exotic marine plants or animals.
1303 5. Section 372.26, prohibiting the importation of
1304 freshwater fish.
1305 6. Section 372.265, prohibiting the importation of
1306 nonindigenous species of the animal kingdom without a permit
1307 issued by the commission.
1308 7. Subsection 372.57(17), prohibiting the taking of game,
1309 freshwater fish, saltwater fish, or fur-bearing animals while a
1310 required license is suspended or revoked.
1311 8. Section 372.662, prohibiting the illegal sale or
1312 possession of alligators.
1313 9. Subsections 372.99(1), (3), and (6), prohibiting the
1314 illegal taking and possession of deer and wild turkey.
1315 10. Section 372.9903, prohibiting the possession and
1316 transportation of commercial quantities of freshwater game fish.
1317 (b)1. A person who commits a Level Three violation but who
1318 has not been convicted of a Level Three or higher violation
1319 within the past 10 years commits a misdemeanor of the first
1320 degree, punishable as provided in s. 775.082 or s. 775.083.
1321 2. A person who commits a Level Three violation within 10
1322 years after a previous conviction for a Level Three or higher

1323 violation commits a misdemeanor of the first degree, punishable
1324 as provided in s. 775.082 or s. 775.083, with a minimum
1325 mandatory fine of $750 and a suspension of any recreational
1326 license or permit issued under s. 372.57 for the remainder of
1327 the period for which the license or permit was issued up to 3
1328 years. If the recreational license or permit being suspended was
1329 an annual license or permit, any privileges under s. 372.57 may
1330 not be acquired for a 3-year period following the date of the
1331 violation.
1332 3. A person who commits a violation of s. 372.57(17) shall
1333 receive a mandatory fine of $1,000. Any privileges under s.
1334 372.57 may not be acquired for a 5-year period following the
1335 date of the violation.
1336 (4)(a) LEVEL FOUR VIOLATIONS.--A person commits a Level
1337 Four violation if he or she violates any of the following
1338 provisions:
1339 1. Paragraph 370.13(2)(c), prohibiting the willful
1340 molestation of stone crab gear; the illegal trade, sale, or
1341 supply of stone crab trap tags or certificates; the unlawful
1342 reproduction or possession of stone crab trap tags or
1343 certificates; or the unlawful harvest of stone crabs.
1344 2. Section 370.135, prohibiting the willful molestation of
1345 blue crab gear.
1346 3. Subsection 370.14(4), prohibiting the willful
1347 molestation of crawfish gear.
1348 4. Subparagraph 370.142(2)(c)5., prohibiting the unlawful
1349 reproduction of spiny lobster trap tags or certificates.

1350 5. Subsection 372.57(16), prohibiting the making, forging,
1351 counterfeiting, or reproduction of a recreational license or
1352 possession of same without authorization from the commission.
1353 6. Subsection 372.99(5), prohibiting the sale of illegally
1354 taken deer or wild turkey.
1355 7. Section 372.99022, prohibiting the molestation or theft
1356 of freshwater fishing gear.
1357 (b) A person who commits a Level Four violation commits a
1358 felony of the third degree, punishable as provided in s. 775.082
1359 or s. 775.083.
1360 (5) VIOLATIONS OF CHAPTER.--Except as provided in this
1361 chapter:
1362 (a) A person who commits a violation of any provision of
1363 this chapter commits, for the first offense, a misdemeanor of
1364 the second degree, punishable as provided in s. 775.082 or s.
1365 775.083.
1366 (b) A person who is convicted of a second or subsequent
1367 violation of any provision of this chapter commits a misdemeanor
1368 of the first degree, punishable as provided in s. 775.082 or s.
1369 775.083.
1370 (6) SUSPENSION OR FORFEITURE OF LICENSE.--The court may
1371 order the suspension or forfeiture of any license or permit
1372 issued under this chapter to a person who is found guilty of
1373 committing a violation of this chapter.
1374 (7) CONVICTION DEFINED.--As used in this section, the term
1375 "conviction" means any judicial disposition other than acquittal
1376 or dismissal.

1377 Section 20. Section 372.935, Florida Statutes, is created
1378 to read:
1379 372.935 Captive wildlife penalties.--
1380 (1) LEVEL ONE.--Unless otherwise provided by law, the
1381 following classifications and penalties apply:
1382 (a) A person commits a Level One violation if she or he
1383 violates any of the following provisions:
1384 1. Rules or orders of the commission requiring free
1385 permits or other authorizations to possess captive wildlife.
1386 2. Rules or orders of the commission relating to the
1387 filing of reports or other documents required of persons who are
1388 licensed to possess captive wildlife.
1389 3. Rules or orders of the commission requiring permits to
1390 possess captive wildlife that a fee is charged for, when the
1391 person being charged was issued the permit and the permit has
1392 expired less than 1 year prior to the violation.
1393 (b) Any person cited for committing any offense classified
1394 as a Level One violation commits a noncriminal infraction,
1395 punishable as provided in this section.
1396 (c) Any person cited for committing a noncriminal
1397 infraction specified in paragraph (a) shall be cited to appear
1398 before the county court. The civil penalty for any noncriminal
1399 infraction is $50 if the person cited has not previously been
1400 found guilty of a Level One violation and $250 if the person
1401 cited has previously been found guilty of a Level One violation,
1402 except as otherwise provided in this subsection. Any person
1403 cited for failing to have a required permit or license shall pay

1404 an additional civil penalty in the amount of the license fee
1405 required.
1406 (d) Any person cited for an infraction under this
1407 subsection may:
1408 1. Post a bond, which shall be equal in amount to the
1409 applicable civil penalty; or
1410 2. Sign and accept a citation indicating a promise to
1411 appear before the county court. The officer may indicate on the
1412 citation the time and location of the scheduled hearing and
1413 shall indicate the applicable civil penalty.
1414 (e) Any person charged with a noncriminal infraction under
1415 this subsection may:
1416 1. Pay the civil penalty, either by mail or in person,
1417 within 30 days after the date of receiving the citation; or
1418 2. If the person has posted bond, forfeit bond by not
1419 appearing at the designated time and location.
1420 (f) If the person cited follows either of the procedures
1421 in subparagraph (e)1. or subparagraph (e)2., he or she shall be
1422 deemed to have admitted the infraction and to have waived his or
1423 her right to a hearing on the issue of commission of the
1424 infraction. Such admission shall not be used as evidence in any
1425 other proceedings except to determine the appropriate fine for
1426 any subsequent violations.
1427 (g) Any person who willfully refuses to post bond or
1428 accept and sign a summons is guilty of a misdemeanor of the
1429 second degree, punishable as provided in s. 775.082 or s.
1430 775.083. Any person who fails to pay the civil penalty specified
1431 in this subsection within 30 days after being cited for a

1432 noncriminal infraction or to appear before the court pursuant to
1433 this subsection is guilty of a misdemeanor of the second degree,
1434 punishable as provided in s. 775.082 or s. 775.083.
1435 (h) Any person electing to appear before the county court
1436 or who is required to appear shall be deemed to have waived the
1437 limitations on the civil penalty specified in paragraph (c). The
1438 court, after a hearing, shall make a determination as to whether
1439 an infraction has been committed. If the commission of an
1440 infraction has been proven, the court may impose a civil penalty
1441 not less than those amounts in paragraph (c) and not to exceed
1442 $500.
1443 (i) At a hearing under this chapter, the commission of a
1444 charged infraction must be proved beyond a reasonable doubt.
1445 (j) If a person is found by the hearing official to have
1446 committed an infraction, she or he may appeal that finding to
1447 the circuit court.
1448 (2) LEVEL TWO.--Unless otherwise provided by law, the
1449 following classifications and penalties apply:
1450 (a) A person commits a Level Two violation if he or she
1451 violates any of the following provisions:
1452 1. Unless otherwise stated in subsection (1), rules or
1453 orders of the commission that require a person to pay a fee to
1454 obtain a permit to possess captive wildlife or that require the
1455 maintenance of records relating to captive wildlife.
1456 2. Rules or orders of the commission relating to captive
1457 wildlife not specified in subsections (1) or (3).

1458 3. Rules or orders of the commission that require housing
1459 of wildlife in a safe manner when a violation results in an
1460 escape of wildlife other than Class I wildlife.
1461 4. Section 372.86, relating to possessing or exhibiting
1462 reptiles.
1463 5. Section 372.87, relating to licensing of reptiles.
1464 6. Section 372.88, relating to bonding requirements for
1465 exhibits.
1466 7. Section 372.89, relating to housing requirements.
1467 8. Section 372.90, relating to transportation.
1468 9. Section 372.901, relating to inspection.
1469 10. Section 372.91, relating to limitation of access to
1470 reptiles.
1471 11. Section 372.921, relating to exhibition or sale of
1472 wildlife.
1473 12. Section 372.922, relating to personal possession of
1474 wildlife.
1475 (b) A person who commits any offense classified as a Level
1476 Two violation, who has not been convicted of a violation that is
1477 classified as a Level Two or above within the past 3 years, is
1478 guilty of a misdemeanor of the second degree, punishable as
1479 provided in s. 775.082 or s. 775.083.
1480 (c) Unless otherwise stated in this paragraph, a person
1481 who commits any offense classified as a Level Two violation
1482 within a 3-year period of any previous conviction of any offense
1483 classified as a Level Two violation or higher is guilty of a
1484 misdemeanor of the first degree, punishable as provided in s.
1485 775.082 or s. 775.083 with a minimum mandatory fine of $250.

1486 (d) Unless otherwise stated in this paragraph, a person
1487 who commits any offense classified as a Level Two violation
1488 within a 5-year period of any two previous convictions of
1489 offenses that are classified as Level Two violations or above is
1490 guilty of a misdemeanor of the first degree, punishable as
1491 provided in s. 775.082 or s. 775.083 with a minimum mandatory
1492 fine of $500 and a suspension of all licenses issued under this
1493 chapter related to captive wildlife for 1 year.
1494 (e) A person who commits any offense classified as a Level
1495 Two violation within a 10-year period of any three previous
1496 convictions of offenses classified as Level Two violations or
1497 above is guilty of a misdemeanor of the first degree, punishable
1498 as provided in s. 775.082 or s. 775.083 with a minimum mandatory
1499 fine of $750 and a suspension of all licenses issued under this
1500 chapter related to captive wildlife for 3 years.
1501 (3) LEVEL THREE.--Unless otherwise provided by law, the
1502 following classifications and penalties apply.
1503 (a) A person is guilty of a Level Three violation if he or
1504 she violates any of the following provisions:
1505 1. Rules or orders of the commission that require housing
1506 of wildlife in a safe manner when a violation results in an
1507 escape of Class I wildlife.
1508 2. Rules or orders of the commission related to captive
1509 wildlife when the violation results in serious bodily injury to
1510 another person by captive wildlife which consists of a physical
1511 condition that creates a substantial risk of death, serious
1512 personal disfigurement, or protracted loss or impairment of the
1513 function of any bodily member or organ.

1514 3. Rules or orders of the commission relating to the use
1515 of gasoline or other chemical or gaseous substances on wildlife.
1516 4. Rules or orders of the commission prohibiting the
1517 release of wildlife for which only conditional possession is
1518 allowed.
1519 5. Rules or orders of the commission prohibiting knowingly
1520 entering false information on an application for a license or
1521 permit when the license or permit is to possess wildlife in
1522 captivity.
1523 6. Section 372.265, relating to illegal importation or
1524 introduction of foreign wildlife.
1525 (b)1. A person who commits any offense classified as a
1526 Level Three violation, who has not been convicted of a violation
1527 that is classified as a Level Three or above within the past 10
1528 years, is guilty of a misdemeanor of the first degree,
1529 punishable as provided in s. 775.082 or s. 775.083.
1530 2. A person who commits any offense classified as a Level
1531 Three violation within a 10-year period of any previous
1532 conviction of any offense classified as a Level Three violation
1533 or above is guilty of a misdemeanor of the first degree,
1534 punishable as provided in s. 775.082 or s. 775.083 with a
1535 minimum mandatory fine of $750 and a suspension of all licenses
1536 issued under this chapter relating to captive wildlife for 3
1537 years.
1538 (4) LEVEL FOUR.--Unless otherwise provided by law, the
1539 following classifications and penalties apply.
1540 (a) A person is guilty of a Level Four violation if he or
1541 she violates any of the following provisions:

1542 1. Section 370.081, relating to the illegal importation
1543 and possession of nonindigenous marine plants and animals.
1544 2. Section 372.92, relating to release of reptiles of
1545 concern.
1546 3. Rules or orders of the commission relating to the
1547 importation, possession, or release of fish and wildlife for
1548 which possession is prohibited.
1549 (b) A person who commits any offense classified as a Level
1550 Four violation is guilty of a felony of the third degree,
1551 punishable as provided in s. 775.082 or s. 775.083 with a
1552 permanent revocation of all licenses or permits to possess
1553 captive wildlife issued under this chapter.
1554 (5) VIOLATIONS OF SECTION.--Unless otherwise provided in
1555 this chapter, a person who violates any provision of this
1556 section is guilty, for the first offense, of a misdemeanor of
1557 the second degree, punishable as provided in s. 775.082 or s.
1558 775.083, and is guilty, for the second offense or any subsequent
1559 offense, of a misdemeanor of the first degree, punishable as
1560 provided in s. 775.082 or s. 775.083.
1561 (6) SUSPENSION OR REVOCATION OF LICENSE.--The court may
1562 order the suspension or revocation of any license or permit
1563 issued to a person to possess captive wildlife pursuant to this
1564 chapter if that person commits a criminal offense or a
1565 noncriminal infraction as specified under this section.
1566 (7) CONVICTION DEFINED.--For purposes of this section,
1567 conviction means any judicial disposition other than acquittal
1568 or dismissal.

1569 (8) COMMISSION LIMITATIONS.--Nothing herein shall limit
1570 the commission from suspending or revoking any license to
1571 possess wildlife in captivity by administrative action in
1572 accordance with chapter 120. For purposes of administrative
1573 action, a conviction of a criminal offense shall mean any
1574 judicial disposition other than acquittal or dismissal.
1575 Section 21. Section 372.26, Florida Statutes, is amended
1576 to read:
1577 372.26 Imported fish.--
1578 (1) No person shall import into the state or place in any
1579 of the fresh waters of the state any freshwater fish of any
1580 species without having first obtained a permit from the Fish and
1581 Wildlife Conservation Commission. The commission is authorized
1582 to issue or deny such a permit upon the completion of studies of
1583 the species made by it to determine any detrimental effect the
1584 species might have on the ecology of the state.
1585 (2) A person who violates this section commits a Level
1586 Three violation under s. 372.83 ~~Persons in violation of this~~
1587 ~~section shall be guilty of a misdemeanor of the first degree,~~
1588 ~~punishable as provided in s. 775.082 or s. 775.083~~.
1589 Section 22. Section 372.265, Florida Statutes, is amended
1590 to read:
1591 372.265 Regulation of foreign animals.--
1592 (1) It is unlawful to import for sale or use, or to
1593 release within this state, any species of the animal kingdom not
1594 indigenous to Florida without having obtained a permit to do so
1595 from the Fish and Wildlife Conservation Commission.

1596 (2) The Fish and Wildlife Conservation Commission is
1597 authorized to issue or deny such a permit upon the completion of
1598 studies of the species made by it to determine any detrimental
1599 effect the species might have on the ecology of the state.
1600 (3) A person ~~Persons~~ in violation of this section commits
1601 a Level Three violation under s. 372.83 ~~shall be guilty of a~~
1602 ~~misdemeanor of the first degree, punishable as provided in s.~~
1603 ~~775.082 or s. 775.083~~.
1604 Section 23. Subsection (2) of section 372.661, Florida
1605 Statutes, is amended to read:
1606 372.661 Private hunting preserve license fees;
1607 exception.--
1608 (2) A commercial hunting preserve license, which shall
1609 exempt patrons of licensed preserves from the license and permit
1610 requirements of s. 372.57(4)(c), (d), (f), (h), (i), and (j);
1611 (5)(f) and (g); (8)(a), (b), and (e)~~, and (f)~~; (9)(a)2.; (11);
1612 and (12) while hunting on the licensed preserve property, shall
1613 be $500. Such commercial hunting preserve license shall be
1614 available only to those private hunting preserves licensed
1615 pursuant to this section which are operated exclusively for
1616 commercial purposes, which are open to the public, and for which
1617 a uniform fee is charged to patrons for hunting privileges.
1618 Section 24. Section 372.662, Florida Statutes, is amended
1619 to read:
1620 372.662 Unlawful sale, possession, or transporting of
1621 alligators or alligator skins.--Whenever the sale, possession,
1622 or transporting of alligators or alligator skins is prohibited
1623 by any law of this state, or by the rules, regulations, or

1624 orders of the Fish and Wildlife Conservation Commission adopted
1625 pursuant to s. 9, Art. IV of the State Constitution, the sale,
1626 possession, or transporting of alligators or alligator skins is
1627 a Level Three violation under s. 372.83 ~~misdemeanor of the first~~
1628 ~~degree, punishable as provided in s. 775.082 or s. 775.083~~.
1629 Section 25. Section 372.667, Florida Statutes, is amended
1630 to read:
1631 372.667 Feeding or enticement of alligators or crocodiles
1632 unlawful; penalty.--
1633 (1) No person shall intentionally feed, or entice with
1634 feed, any wild American alligator (Alligator mississippiensis)
1635 or American crocodile (Crocodylus acutus). However, the
1636 provisions of this section shall not apply to:
1637 (a) Those persons feeding alligators or crocodiles
1638 maintained in protected captivity for educational, scientific,
1639 commercial, or recreational purposes.
1640 (b) Fish and Wildlife Conservation Commission personnel,
1641 persons licensed or otherwise authorized by the commission, or
1642 county or municipal animal control personnel when relocating
1643 alligators or crocodiles by baiting or enticement.
1644 (2) For the purposes of this section, the term "maintained
1645 in protected captivity" means held in captivity under a permit
1646 issued by the Fish and Wildlife Conservation Commission pursuant
1647 to s. 372.921 or s. 372.922.
1648 (3) Any person who violates this section commits a Level
1649 Two violation under s. 372.83 ~~is guilty of a misdemeanor of the~~
1650 ~~second degree, punishable as provided in s. 775.082 or s.~~
1651 ~~775.083~~.

1652 Section 26. Section 372.705, Florida Statutes, is amended
1653 to read:
1654 372.705 Harassment of hunters, trappers, or fishers.--
1655 (1) A person may not intentionally, within a publicly or
1656 privately owned wildlife management or fish management area or
1657 on any state-owned water body:
1658 (a) Interfere with or attempt to prevent the lawful taking
1659 of fish, game, or nongame animals by another.
1660 (b) Attempt to disturb fish, game, or nongame animals or
1661 attempt to affect their behavior with the intent to prevent
1662 their lawful taking by another.
1663 (2) Any person who violates this section commits a Level
1664 Two violation under s. 372.83 ~~subsection (1) is guilty of a~~
1665 ~~misdemeanor of the second degree, punishable as provided in s.~~
1666 ~~775.082 or s. 775.083~~.
1667 Section 27. Section 372.988, Florida Statutes, is amended
1668 to read:
1669 372.988 Required clothing for persons hunting deer.--It is
1670 a Level One violation under s. 372.83 ~~unlawful~~ for any person to
1671 hunt deer, or for any person to accompany another person hunting
1672 deer, during the open season for the taking of deer on public
1673 lands unless each person shall wear a total of at least 500
1674 square inches of daylight fluorescent orange material as an
1675 outer garment. Such clothing shall be worn above the waistline
1676 and may include a head covering. The provisions of this section
1677 shall not apply to any person hunting deer with a bow and arrow
1678 during seasons restricted to hunting with a bow and arrow.

1679 Section 28. Subsection (1) of section 372.99022, Florida
1680 Statutes, is amended to read:
1681 372.99022 Illegal molestation of or theft from freshwater
1682 fishing gear.--
1683 (1)(a) Any person, firm, or corporation that willfully
1684 molests any authorized and lawfully permitted freshwater fishing
1685 gear belonging to another without the express written consent of
1686 the owner commits a Level Four violation under s. 372.83 ~~felony~~
1687 ~~of the third degree, punishable as provided in s. 775.082, s.~~
1688 ~~775.083, or s. 775.084~~. Any written consent must be available
1689 for immediate inspection.
1690 (b) Any person, firm, or corporation that willfully
1691 removes the contents of any authorized and lawfully permitted
1692 freshwater fishing gear belonging to another without the express
1693 written consent of the owner commits a Level Four violation
1694 under s. 372.83 ~~felony of the third degree, punishable as~~
1695 ~~provided in s. 775.082, s. 775.083, or s. 775.084~~. Any written
1696 consent must be available for immediate inspection.
1697
1698 A person, firm, or corporation that receives a citation for a
1699 violation of this subsection is prohibited, immediately upon
1700 receipt of such citation and until adjudicated or convicted of a
1701 felony under this subsection, from transferring any
1702 endorsements.
1703 Section 29. Section 372.99, Florida Statutes, is amended
1704 to read:
1705 372.99 Illegal taking and possession of deer and wild
1706 turkey; evidence; penalty.--

1707 (1) Whoever takes or kills any deer or wild turkey, or
1708 possesses a freshly killed deer or wild turkey, during the
1709 closed season prescribed by law or by the rules and regulations
1710 of the Fish and Wildlife Conservation Commission, or whoever
1711 takes or attempts to take any deer or wild turkey by the use of
1712 gun and light in or out of closed season, commits a Level Three
1713 violation under s. 372.83 ~~is guilty of a misdemeanor of the~~
1714 ~~first degree, punishable as provided in s. 775.082 or s.~~
1715 ~~775.083,~~ and shall forfeit any license or permit issued to her
1716 or him under the provisions of this chapter. No license shall be
1717 issued to such person for a period of 3 years following any such
1718 violation on the first offense. Any person guilty of a second or
1719 subsequent violation shall be permanently ineligible for
1720 issuance of a license or permit thereafter.
1721 (2) The display or use of a light in a place where deer
1722 might be found and in a manner capable of disclosing the
1723 presence of deer, together with the possession of firearms or
1724 other weapons customarily used for the taking of deer, between 1
1725 hour after sunset and 1 hour before sunrise, shall be prima
1726 facie evidence of an intent to violate the provisions of
1727 subsection (1). This subsection does not apply to an owner or
1728 her or his employee when patrolling or inspecting the land of
1729 the owner, provided the employee has satisfactory proof of
1730 employment on her or his person.
1731 (3) Whoever takes or kills any doe deer; fawn or baby
1732 deer; or deer, whether male or female, which does not have one
1733 or more antlers at least 5 inches in length, except as provided
1734 by law or the rules of the Fish and Wildlife Conservation

1735 Commission, during the open season prescribed by the rules of
1736 the commission, commits a Level Three violation under s. 372.83
1737 ~~is guilty of a misdemeanor of the first degree, punishable as~~
1738 ~~provided in s. 775.082 or s. 775.083,~~ and may be required to
1739 forfeit any license or permit issued to such person for a period
1740 of 3 years following any such violation on the first offense.
1741 Any person guilty of a second or subsequent violation shall be
1742 permanently ineligible for issuance of a license or permit
1743 thereafter.
1744 (4) Any person who cultivates agricultural crops may apply
1745 to the Fish and Wildlife Conservation Commission for a permit to
1746 take or kill deer on land which that person is currently
1747 cultivating. When said person can show, to the satisfaction of
1748 the Fish and Wildlife Conservation Commission, that such taking
1749 or killing of deer is justified because of damage to the
1750 person's crops caused by deer, the Fish and Wildlife
1751 Conservation Commission may issue a limited permit to the
1752 applicant to take or kill deer without being in violation of
1753 subsection (1) or subsection (3).
1754 (5) Whoever possesses for sale or sells deer or wild
1755 turkey taken in violation of this chapter or the rules and
1756 regulations of the commission commits a Level Four violation
1757 under s. 372.83 ~~is guilty of a felony of the third degree,~~
1758 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.
1759 (6) Any person who enters upon private property and shines
1760 lights upon such property, without the express permission of the
1761 owner of the property and with the intent to take deer by
1762 utilizing such shining lights, commits a Level Three violation

1763 under s. 372.83 ~~shall be guilty of a misdemeanor of the second~~
1764 ~~degree, punishable as provided in s. 775.082 or s. 775.083~~.
1765 Section 30. Subsection (1) of section 372.9903, Florida
1766 Statutes, is amended to read:
1767 372.9903 Illegal possession or transportation of
1768 freshwater game fish in commercial quantities; penalty.--
1769 (1) Whoever possesses, moves, or transports any black
1770 bass, bream, speckled perch, or other freshwater game fish in
1771 commercial quantities in violation of law or the rules of the
1772 Fish and Wildlife Conservation Commission commits a Level Three
1773 violation under s. 372.83 ~~shall be guilty of a misdemeanor of~~
1774 ~~the first degree, punishable as provided in s. 775.082 or s.~~
1775 ~~775.083~~.
1776 Section 31. Section 372.831, Florida Statutes, is created
1777 to read:
1778 372.831 Wildlife Violators Compact.--The Wildlife
1779 Violators Compact is created and entered into with all other
1780 jurisdictions legally joining therein in the form substantially
1781 as follows:
1782
1783 ARTICLE I
1784 Findings and Purpose
1785
1786 (1) The participating states find that:
1787 (a) Wildlife resources are managed in trust by the
1788 respective states for the benefit of all residents and visitors.
1789 (b) The protection of the wildlife resources of a state is
1790 materially affected by the degree of compliance with state

1791 statutes, laws, regulations, ordinances, and administrative
1792 rules relating to the management of such resources.
1793 (c) The preservation, protection, management, and
1794 restoration of wildlife contributes immeasurably to the
1795 aesthetic, recreational, and economic aspects of such natural
1796 resources.
1797 (d) Wildlife resources are valuable without regard to
1798 political boundaries; therefore, every person should be required
1799 to comply with wildlife preservation, protection, management,
1800 and restoration laws, ordinances, and administrative rules and
1801 regulations of the participating states as a condition precedent
1802 to the continuance or issuance of any license to hunt, fish,
1803 trap, or possess wildlife.
1804 (e) Violation of wildlife laws interferes with the
1805 management of wildlife resources and may endanger the safety of
1806 persons and property.
1807 (f) The mobility of many wildlife law violators
1808 necessitates the maintenance of channels of communication among
1809 the various states.
1810 (g) In most instances, a person who is cited for a
1811 wildlife violation in a state other than his or her home state
1812 is:
1813 1. Required to post collateral or a bond to secure
1814 appearance for a trial at a later date;
1815 2. Taken into custody until the collateral or bond is
1816 posted; or
1817 3. Taken directly to court for an immediate appearance.

1818 (h) The purpose of the enforcement practices set forth in
1819 paragraph (g) is to ensure compliance with the terms of a
1820 wildlife citation by the cited person who, if permitted to
1821 continue on his or her way after receiving the citation, could
1822 return to his or her home state and disregard his or her duty
1823 under the terms of the citation.
1824 (i) In most instances, a person receiving a wildlife
1825 citation in his or her home state is permitted to accept the
1826 citation from the officer at the scene of the violation and
1827 immediately continue on his or her way after agreeing or being
1828 instructed to comply with the terms of the citation.
1829 (j) The enforcement practices described in paragraph (g)
1830 cause unnecessary inconvenience and, at times, a hardship for
1831 the person who is unable at the time to post collateral, furnish
1832 a bond, stand trial, or pay a fine, and thus is compelled to
1833 remain in custody until some alternative arrangement is made.
1834 (k) The enforcement practices described in paragraph (g)
1835 consume an undue amount of time of law enforcement agencies.
1836 (2) It is the policy of the participating states to:
1837 (a) Promote compliance with the statutes, laws,
1838 ordinances, regulations, and administrative rules relating to
1839 the management of wildlife resources in their respective states.
1840 (b) Recognize a suspension of the wildlife license
1841 privileges of any person whose license privileges have been
1842 suspended by a participating state and treat such suspension as
1843 if it had occurred in each respective state.
1844 (c) Allow a violator, except as provided in subsection (2)
1845 of Article III, to accept a wildlife citation and, without

1846 delay, proceed on his or her way, whether or not the violator is
1847 a resident of the state in which the citation was issued, if the
1848 violator's home state is party to this compact.
1849 (d) Report to the appropriate participating state, as
1850 provided in the compact manual, any conviction recorded against
1851 any person whose home state was not the issuing state.
1852 (e) Allow the home state to recognize and treat
1853 convictions recorded against its residents, which convictions
1854 occurred in a participating state, as though they had occurred
1855 in the home state.
1856 (f) Extend cooperation to its fullest extent among the
1857 participating states for enforcing compliance with the terms of
1858 a wildlife citation issued in one participating state to a
1859 resident of another participating state.
1860 (g) Maximize the effective use of law enforcement
1861 personnel and information.
1862 (h) Assist court systems in the efficient disposition of
1863 wildlife violations.
1864 (3) The purpose of this compact is to:
1865 (a) Provide a means through which participating states may
1866 join in a reciprocal program to effectuate the policies
1867 enumerated in subsection (2) in a uniform and orderly manner.
1868 (b) Provide for the fair and impartial treatment of
1869 wildlife violators operating within participating states in
1870 recognition of the violator's right to due process and the
1871 sovereign status of a participating state.
1872
1873 ARTICLE II

1874 Definitions
1875
1876 As used in this compact, the term:
1877 (1) "Citation" means any summons, complaint, summons and
1878 complaint, ticket, penalty assessment, or other official
1879 document issued to a person by a wildlife officer or other peace
1880 officer for a wildlife violation which contains an order
1881 requiring the person to respond.
1882 (2) "Collateral" means any cash or other security
1883 deposited to secure an appearance for trial in connection with
1884 the issuance by a wildlife officer or other peace officer of a
1885 citation for a wildlife violation.
1886 (3) "Compliance" with respect to a citation means the act
1887 of answering a citation through an appearance in a court or
1888 tribunal, or through the payment of fines, costs, and
1889 surcharges, if any.
1890 (4) "Conviction" means a conviction, including any court
1891 conviction, for any offense related to the preservation,
1892 protection, management, or restoration of wildlife which is
1893 prohibited by state statute, law, regulation, ordinance, or
1894 administrative rule that results in suspension or revocation of
1895 a license. The term also includes the forfeiture of any bail,
1896 bond, or other security deposited to secure appearance by a
1897 person charged with having committed any such offense, the
1898 payment of a penalty assessment, a plea of nolo contendere, or
1899 the imposition of a deferred or suspended sentence by the court.
1900 (5) "Court" means a court of law, including magistrate's
1901 court and the justice of the peace court.

1902 (6) "Home state" means the state of primary residence of a
1903 person.
1904 (7) "Issuing state" means the participating state that
1905 issues a wildlife citation to the violator.
1906 (8) "License" means any license, permit, or other public
1907 document that conveys to the person to whom it was issued the
1908 privilege of pursuing, possessing, or taking any wildlife
1909 regulated by statute, law, regulation, ordinance, or
1910 administrative rule of a participating state; any privilege to
1911 obtain such license, permit, or other public document; or any
1912 statutory exemption from the requirement to obtain such license,
1913 permit, or other public document. However, when applied to
1914 licenses issued by the State of Florida, only those licenses
1915 issued or privileges authorized pursuant to s. 372.561, s.
1916 372.562, or s. 372.57 shall be considered licenses.
1917 (9) "Licensing authority" means the department or division
1918 within each participating state that is authorized by law to
1919 issue or approve licenses or permits to hunt, fish, trap, or
1920 possess wildlife.
1921 (10) "Participating state" means any state that enacts
1922 legislation to become a member of this wildlife compact.
1923 (11) "Personal recognizance" means an agreement by a
1924 person made at the time of issuance of the wildlife citation
1925 that such person will comply with the terms of the citation.
1926 (12) "State" means any state, territory, or possession of
1927 the United States, the District of Columbia, the Commonwealth of
1928 Puerto Rico, the Provinces of Canada, and other countries.

1929 (13) "Suspension" means any revocation, denial, or
1930 withdrawal of any or all license privileges, including the
1931 privilege to apply for, purchase, or exercise the benefits
1932 conferred by any license.
1933 (14) "Terms of the citation" means those conditions and
1934 options expressly stated upon the citation.
1935 (15) "Wildlife" means all species of animals, including,
1936 but not limited to, mammals, birds, fish, reptiles, amphibians,
1937 mollusks, and crustaceans, which are defined as "wildlife" and
1938 are protected or otherwise regulated by statute, law,
1939 regulation, ordinance, or administrative rule in a participating
1940 state. Species included in the definition of "wildlife" vary
1941 from state to state and the determination of whether a species
1942 is "wildlife" for the purposes of this compact shall be based on
1943 local law.
1944 (16) "Wildlife law" means any statute, law, regulation,
1945 ordinance, or administrative rule developed and enacted for the
1946 management of wildlife resources and the uses thereof.
1947 (17) "Wildlife officer" means any individual authorized by
1948 a participating state to issue a citation for a wildlife
1949 violation.
1950 (18) "Wildlife violation" means any cited violation of a
1951 statute, law, regulation, ordinance, or administrative rule
1952 developed and enacted for the management of wildlife resources
1953 and the uses thereof.
1954
1955 ARTICLE III
1956 Procedures for Issuing State

1957
1958 (1) When issuing a citation for a wildlife violation, a
1959 wildlife officer shall issue a citation to any person whose
1960 primary residence is in a participating state in the same manner
1961 as though the person were a resident of the issuing state and
1962 shall not require such person to post collateral to secure
1963 appearance, subject to the exceptions noted in subsection (2),
1964 if the officer receives the recognizance of such person that he
1965 will comply with the terms of the citation.
1966 (2) Personal recognizance is acceptable if not prohibited
1967 by local law; by policy, procedure, or regulation of the issuing
1968 agency; or by the compact manual and if the violator provides
1969 adequate proof of identification to the wildlife officer.
1970 (3) Upon conviction or failure of a person to comply with
1971 the terms of a wildlife citation, the appropriate official shall
1972 report the conviction or failure to comply to the licensing
1973 authority of the participating state in which the wildlife
1974 citation was issued. The report shall be made in accordance with
1975 procedures specified by the issuing state and must contain
1976 information as specified in the compact manual as minimum
1977 requirements for effective processing by the home state.
1978 (4) Upon receipt of the report of conviction or
1979 noncompliance pursuant to subsection (3), the licensing
1980 authority of the issuing state shall transmit to the licensing
1981 authority of the home state of the violator the information in
1982 the form and content prescribed in the compact manual.
1983
1984 ARTICLE IV

1985 Procedure for Home State
1986
1987 (1) Upon receipt of a report from the licensing authority
1988 of the issuing state reporting the failure of a violator to
1989 comply with the terms of a citation, the licensing authority of
1990 the home state shall notify the violator and shall initiate a
1991 suspension action in accordance with the home state's suspension
1992 procedures and shall suspend the violator's license privileges
1993 until satisfactory evidence of compliance with the terms of the
1994 wildlife citation has been furnished by the issuing state to the
1995 home state licensing authority. Due process safeguards shall be
1996 accorded.
1997 (2) Upon receipt of a report of conviction from the
1998 licensing authority of the issuing state, the licensing
1999 authority of the home state shall enter such conviction in its
2000 records and shall treat such conviction as though it occurred in
2001 the home state for purposes of the suspension of license
2002 privileges.
2003 (3) The licensing authority of the home state shall
2004 maintain a record of actions taken and shall make reports to
2005 issuing states as provided in the compact manual.
2006
2007 ARTICLE V
2008 Reciprocal Recognition of Suspension
2009
2010 (1) Each participating state may recognize the suspension
2011 of license privileges of any person by any other participating
2012 state as though the violation resulting in the suspension had

2013 occurred in that state and would have been the basis for
2014 suspension of license privileges in that state.
2015 (2) Each participating state shall communicate suspension
2016 information to other participating states in the form and
2017 content contained in the compact manual.
2018
2019 ARTICLE VI
2020 Applicability of Other Laws
2021
2022 Except as expressly required by provisions of this compact, this
2023 compact does not affect the right of any participating state to
2024 apply any of its laws relating to license privileges to any
2025 person or circumstance or to invalidate or prevent any agreement
2026 or other cooperative arrangement between a participating state
2027 and a nonparticipating state concerning the enforcement of
2028 wildlife laws.
2029
2030 ARTICLE VII
2031 Compact Administrator Procedures
2032
2033 (1) For the purpose of administering the provisions of
2034 this compact and to serve as a governing body for the resolution
2035 of all matters relating to the operation of this compact, a
2036 board of compact administrators is established. The board shall
2037 be composed of one representative from each of the participating
2038 states to be known as the compact administrator. The compact
2039 administrator shall be appointed by the head of the licensing
2040 authority of each participating state and shall serve and be

2041 subject to removal in accordance with the laws of the state he
2042 or she represents. A compact administrator may provide for the
2043 discharge of his or her duties and the performance of his or her
2044 functions as a board member by an alternate. An alternate is not
2045 entitled to serve unless written notification of his or her
2046 identity has been given to the board.
2047 (2) Each member of the board of compact administrators
2048 shall be entitled to one vote. No action of the board shall be
2049 binding unless taken at a meeting at which a majority of the
2050 total number of the board's votes are cast in favor thereof.
2051 Action by the board shall be only at a meeting at which a
2052 majority of the participating states are represented.
2053 (3) The board shall elect annually from its membership a
2054 chair and vice chair.
2055 (4) The board shall adopt bylaws not inconsistent with the
2056 provisions of this compact or the laws of a participating state
2057 for the conduct of its business and shall have the power to
2058 amend and rescind its bylaws.
2059 (5) The board may accept for any of its purposes and
2060 functions under this compact any and all donations and grants of
2061 moneys, equipment, supplies, materials, and services,
2062 conditional or otherwise, from any state, the United States, or
2063 any governmental agency, and may receive, use, and dispose of
2064 the same.
2065 (6) The board may contract with, or accept services or
2066 personnel from, any governmental or intergovernmental agency,
2067 individual, firm, corporation, or private nonprofit organization
2068 or institution.

2069 (7) The board shall formulate all necessary procedures and
2070 develop uniform forms and documents for administering the
2071 provisions of this compact. All procedures and forms adopted
2072 pursuant to board action shall be contained in a compact manual.
2073
2074 ARTICLE VIII
2075 Entry into Compact and Withdrawal
2076
2077 (1) This compact shall become effective at such time as it
2078 is adopted in substantially similar form by two or more states.
2079 (2)(a) Entry into the compact shall be made by resolution
2080 of ratification executed by the authorized officials of the
2081 applying state and submitted to the chair of the board.
2082 (b) The resolution shall substantially be in the form and
2083 content as provided in the compact manual and must include the
2084 following:
2085 1. A citation of the authority from which the state is
2086 empowered to become a party to this compact.
2087 2. An agreement of compliance with the terms and
2088 provisions of this compact.
2089 3. An agreement that compact entry is with all states
2090 participating in the compact and with all additional states
2091 legally becoming a party to the compact.
2092 (c) The effective date of entry shall be specified by the
2093 applying state but may not be less than 60 days after notice has
2094 been given by the chair of the board of the compact
2095 administrators or by the secretariat of the board to each

2096 participating state that the resolution from the applying state
2097 has been received.
2098 (3) A participating state may withdraw from participation
2099 in this compact by official written notice to each participating
2100 state, but withdrawal shall not become effective until 90 days
2101 after the notice of withdrawal is given. The notice must be
2102 directed to the compact administrator of each member state. The
2103 withdrawal of any state does not affect the validity of this
2104 compact as to the remaining participating states.
2105
2106 ARTICLE IX
2107 Amendments to the Compact
2108
2109 (1) This compact may be amended from time to time.
2110 Amendments shall be presented in resolution form to the chair of
2111 the board of compact administrators and shall be initiated by
2112 one or more participating states.
2113 (2) Adoption of an amendment shall require endorsement by
2114 all participating states and shall become effective 30 days
2115 after the date of the last endorsement.
2116
2117 ARTICLE X
2118 Construction and Severability
2119
2120 This compact shall be liberally construed so as to effectuate
2121 the purposes stated herein. The provisions of this compact are
2122 severable and if any phrase, clause, sentence, or provision of
2123 this compact is declared to be contrary to the constitution of

2124 any participating state or of the United States, or if the
2125 applicability thereof to any government, agency, individual, or
2126 circumstance is held invalid, the validity of the remainder of
2127 this compact shall not be affected thereby. If this compact is
2128 held contrary to the constitution of any participating state,
2129 the compact shall remain in full force and effect as to the
2130 remaining states and in full force and effect as to the
2131 participating state affected as to all severable matters.
2132 Section 32. Section 372.8311, Florida Statutes, is created
2133 to read:
2134 372.8311 Compact licensing and enforcement authority;
2135 administrative review.--
2136 (1) For purposes of this chapter and the interstate
2137 Wildlife Violators Compact, the Fish and Wildlife Conservation
2138 Commission is the licensing authority for the State of Florida
2139 and the commission shall enforce the interstate Wildlife
2140 Violators Compact and shall do all things within the
2141 commission's jurisdiction that are necessary to effectuate the
2142 purposes and the intent of the compact. The commission may
2143 execute a resolution of ratification to formalize the State of
2144 Florida's entry into the compact. Upon adoption of the
2145 interstate Wildlife Violators Compact, the commission may adopt
2146 rules to administer the provisions of the compact.
2147 (2) Any act done or omitted pursuant to, or in enforcing,
2148 the provisions of this compact are subject to review in
2149 accordance with chapter 120, Florida Statutes. Notwithstanding
2150 any other provision of this section, actions taken by another
2151 state or its courts shall not be reviewable.

2152 Section 33. Sections 372.711 and 372.912, Florida
2153 Statutes, are repealed.
2154 Section 34. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 507 CS Exemptions from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Kreegel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	7 Y, 0 N, w/CS	Kaiser	Reese
2) Finance & Tax Committee	7 Y, 0 N, w/CS	Noriega	Diez-Arguelles
3) State Resources Council		Kaiser	Hamby
4)			
5)			

SUMMARY ANALYSIS

This bill provides a sales tax exemption for purchases of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production. The bill also provides definitions for low-volume irrigation, microirrigation, and their related components.

The bill deletes sales tax exemptions for generators used on poultry farms and for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised. These exemptions are addressed in other provisions of Chapter 212, F.S.

The Revenue Estimating Conference estimates that the provisions of this bill will result in a negative fiscal impact of $2.9 million to state government and $0.7 million to local governments in FY 2006-07, and of $3.2 million to state government and $0.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.02, F.S., defines terms and phrases used in Chapter 212, F.S., Sales and Use Tax. There is currently no definition or specific exemption for the terms "low-volume irrigation" or "microirrigation."

Section 212.08(3), F.S., provides an exemption for "power farm equipment," including generators and power units used on a farm or in a forest in the agricultural production of crops or products.

Section 212.08(5), F.S., provides exemptions for different categories on account of use. Section 212.08(5)(a), F.S., provides exemptions for items in agricultural use, which include exemptions for generators used on poultry farms, and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

Section 212.08(5)(e), F.S., provides an exemption for butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gas used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm. This exemption includes fuel used to operate heating equipment for a structure in which started pullets or broilers are raised.

Proposed Changes

The bill provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

The bill defines low-volume irrigation or microirrigation as irrigation by means of frequent application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes.

Low-volume irrigation and microirrigation systems are designed to deliver water at a rate of 45 gallons per hour or less per exit point. System components include pumps, pumping stations, control stations, filtration equipment pressure regulators, piping, tubing, emitters, valves, fittings, gauges, sensors, sprinklers, and safety devices.

The bill deletes the exemption for generators used on poultry farms from s. 212.08(5)(a), F.S. Generators used on poultry farms remain exempt under the provisions of s. 212.08(3), F.S.

The bill also deletes the exemption for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised from s. 212.08(5)(a), F.S. Fuel used for such purposes remains exempt under the provisions of s. 212.08(5)(e), F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.02(33), F.S., by providing definitions.

Section 2. Amends s. 212.08(5)(a), F.S., by providing a new exemption, and by deleting exemptions found in other provisions of s. 212.08, F.S.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	(2.9m)	(3.2m)
State Trust	(Insignificant)	(Insignificant)
Total	(2.9m)	(3.2m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	(0.1m)	(0.1m)
Local Gov't. Half Cent	(0.3m)	(0.3m)
Local Option	(0.3m)	(0.3m)
Total Local Impact	(0.7m)	(0.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons purchasing low-volume irrigation, or microirrigation equipment, or their components for use in agricultural production will no longer be required to pay the applicable sales tax on these products.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) will issue a Tax Information Publication (TIP) to inform affected equipment dealers regarding the exemption for low-volume or microirrigation equipment.

DOR also recommends inserting a comma on page 2, line 36, to separate "filtration equipment" from "pressure regulators."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Agriculture Committee adopted a strike-all amendment to the bill. The strike-all amendment provided a sales tax exemption on the purchase of low-volume irrigation, or microirrigation equipment, or components used in agricultural production.

On April 17, 2006, the Finance and Tax Committee adopted one amendment to the bill. This amendment changed the effective date of the bill from upon becoming a law to an effective date of July 1, 2006.

The bill was then reported favorably with a committee substitute, and this analysis reflects the change contained in the amendment adopted by the Finance and Tax Committee.

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to exemptions from the tax on sales, use,
7 and other transactions; amending s. 212.02, F.S.; defining
8 the term "low-volume irrigation" or "microirrigation";
9 amending s. 212.08, F.S.; including in the exemption for
10 items in agricultural use certain agricultural machinery
11 or farm equipment used for low-volume irrigation or
12 microirrigation; deleting certain exemptions relating to
13 certain equipment and fuel used in breeding poultry;
14 providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Subsection (33) is added to section 212.02,
19 Florida Statutes, to read:
20 212.02 Definitions.--The following terms and phrases when
21 used in this chapter have the meanings ascribed to them in this
22 section, except where the context clearly indicates a different
23 meaning:

24 (33) "Low-volume irrigation" or "microirrigation" means
25 irrigation by means of frequent application of small quantities
26 of water directly on or below the soil surface, usually as
27 discrete drops, tiny streams, or miniature sprays through
28 emitters placed along the water delivery pipes. Low-volume
29 irrigation and microirrigation systems are designed to deliver
30 water at a rate of 45 gallons per hour or less per exit point.
31 The physical components required to apply water by low-volume
32 irrigation or microirrigation methods include all equipment and
33 system components necessary to transport water from the pump or
34 pumping station to the crop through the low-volume irrigation or
35 microirrigation system. System components include pumps, pumping
36 stations, control stations, filtration equipment pressure
37 regulators, piping, tubing, emitters, valves, fittings, gauges,
38 sensors, sprinklers, and safety devices.
39 Section 2. Paragraph (a) of subsection (5) of section
40 212.08, Florida Statutes, is amended to read:
41 212.08 Sales, rental, use, consumption, distribution, and
42 storage tax; specified exemptions.--The sale at retail, the
43 rental, the use, the consumption, the distribution, and the
44 storage to be used or consumed in this state of the following
45 are hereby specifically exempt from the tax imposed by this
46 chapter.
47 (5) EXEMPTIONS; ACCOUNT OF USE.--
48 (a) Items in agricultural use and certain nets.--There are
49 exempt from the tax imposed by this chapter nets designed and
50 used exclusively by commercial fisheries; disinfectants,
51 fertilizers, insecticides, pesticides, herbicides, fungicides,

52 and weed killers used for application on crops or groves,
53 including commercial nurseries and home vegetable gardens, used
54 in dairy barns or on poultry farms for the purpose of protecting
55 poultry or livestock, or used directly on poultry or livestock;
56 portable containers or movable receptacles in which portable
57 containers are placed, used for processing farm products; field
58 and garden seeds, including flower seeds; nursery stock,
59 seedlings, cuttings, or other propagative material purchased for
60 growing stock; seeds, seedlings, cuttings, and plants used to
61 produce food for human consumption; cloth, plastic, and other
62 similar materials used for shade, mulch, or protection from
63 frost or insects on a farm; and low-volume irrigation or
64 microirrigation equipment or components, as defined in s.
65 212.02(33), used in agricultural production ~~generators used on~~
66 ~~poultry farms; and liquefied petroleum gas or other fuel used to~~
67 ~~heat a structure in which started pullets or broilers are~~
68 ~~raised~~; however, such exemption shall not be allowed unless the
69 purchaser or lessee signs a certificate stating that the item to
70 be exempted is for the exclusive use designated herein. Also
71 exempt are cellophane wrappers, glue for tin and glass
72 (apiarists), mailing cases for honey, shipping cases, window
73 cartons, and baling wire and twine used for baling hay, when
74 used by a farmer to contain, produce, or process an agricultural
75 commodity.
76 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 CS Airboats
SPONSOR(S): Dean and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	11 Y, 0 N, w/CS	Winker	Lotspeich
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Davis	Dixon
3) State Resources Council		Winker KW	Hamby JLO
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several issues relating to the operation of airboats. Specifically, the bill:

- Amends s. 327.02(1), F.S., by defining the terms "airboat" and "muffler" for airboats.
- Creates s. 327.391, F.S., providing for the regulation by the Fish and Wildlife Conservation Commission (FWCC) of airboats and their operation and equipment.
- Requires that airboats have a muffler on their engine capable of effectively and adequately muffling the sound of the exhaust from the engine, except for persons engaged in a regatta, race, marine parade, tournament, or exhibition.
- Provides that an airboat cited for a violation of the muffler requirement must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Requires airboats to be equipped with an orange flag at least 10 inches by 12 inches flying at least 10 feet above the lowest portion of the vessel and that failure to have the flag would be a violation constituting a non-criminal infraction.
- Requires persons convicted of two infractions of the airboat muffler and flag requirements to complete a boating safety course.
- Adds newly created airboat requirements to the list of non-criminal infractions.

The bill has an indeterminate fiscal impact and becomes effective on October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides for additional regulations by Fish and Wildlife Conservation Commission for the operation and equipping of airboats.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Background

Airboats have a long history going as far back as the early 1900s. Around 1905, Alexander Graham Bell joined a team of aviation and boating inventors, including Glenn H. Curtis, early aviator and the inventor of aircraft engines, in Halifax, Nova Scotia where experiments were conducted combining aircraft engines and props and boats. Around 1920, Curtis moved to South Florida and introduced the first airboat to the Florida Everglades.[1]

According to the American Airboat Corporation an airboat is defined as a "buoyant self-propelled multi-terrain vehicle that depends on air thrust for propulsion."[2] Airboats have also been defined as flat-bottomed boats (or punts) powered by a propeller attached to an automobile or aircraft engine. The propeller spins at high speed and requires a large metal cage to protect passengers. The flat bottom of the boat allows airboats to navigate easily through shallow swamps and marshes as well as canals, rivers, and lakes. Drivers of airboats sit high on a platform to improve visibility and for spotting floating obstacles and animals in the airboat's path. Steering of the airboat is accomplished by swiveling vertical fins positioned in the propeller wash. Airboats vary in size from up to 20 (or more) person tour airboats to trail airboats for two to three passengers.

According to the American Airboat Corporation, airboats can reach speeds of 45 mph on land, 60 mph on water, and 70 mph on ice, with the top speed of about 135 mph on smooth, shallow water.

Before 1980, 90% of the airboats used aircraft engines to power the propeller. The rest used automotive engines. Since 1980, 90% of the airboats built have automotive engines because of their ease of maintenance and more readily available parts. Because of the engines used on airboats and the use of the propeller for moving the airboat, airboats typically generate high noise levels.

National Association of State Boating Law Administrators Model Motorboat Noise Act

The National Association of State Boating Law Administrators (NASBLA) represents the boating authorities of all 50 states. In 1989, the NASBLA adopted a model act for motorboat noise. On September 21, 2005, the act was made a part of the 2005 NASBLA Model Acts Review and Standardization Project. The act requires that all motorboats with above-water exhaust install mufflers to reduce exhaust noise and limit shoreline sound level to 75 decibels.

According to the NASBLA (see www.nasbla.org), 32 states have adopted noise regulations equivalent to the requirements described in the Model Act for Motorboat Noise.

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[1] See http://www.glenncurtissmemorialpark.com/curtisshistory.html
[2] See http://www.americanairboats.com-FAQ.htm

The intent of the Model Act is to address motorboat noise and does not address noise generated from other means such as the propeller on an airboat. However, since many airboat associations, including many Florida airboat associations, have expressed the desire that airboats not be discriminated against in the application of noise regulations, it is useful to briefly discuss the NASBLA Model Act.

In the Model Act, the term "muffler" is defined "as a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise."

The Model Act provides for noise level restrictions for motorboats. Under the provisions of the Model Act, no motorboat operator shall operate a motorboat that exceeds the following noise levels:

- For engines manufactured before January 1, 1993, a noise level of 90 decibels.
- For engines manufactured on or after January 1, 1993, a noise level of 88 decibels.

The Model Act establishes requirements for mufflers which include the following:

- Every motorboat shall at all times be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.
- No person shall operate any motorboat that is equipped with an altered muffler or a muffler cutout or bypass or that otherwise reduces or eliminates the effectiveness of any muffler or muffler system.
- No person shall remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that prevents it from being operated in accordance with the provisions of the act.

The Act provides that no person shall manufacture or sell any motorboat with a muffler or muffler system which does not comply with the noise restrictions stated above.

The Act provides exemptions for the motorboat noise restrictions. Such restrictions do not apply to motorboats registered and actually participating in a racing event or tune-up periods for such racing events which must be conducted in accordance with and permitted by the United States Coast Guard or the state boating authority.

And finally, the Act includes provisions for the enforcement of the noise restrictions. Any law enforcement officer authorized to enforce the noise level provisions of the act who has reason to believe that a motorboat is not in compliance with the noise levels of the act, may direct the person operating the motorboat to submit the motorboat to an on-site test to measure the noise level. If the motorboat exceeds the noise level, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping the motorboat at the mooring until the violation is corrected and ceases.

Florida Airboat Associations

There are a number of airboat associations throughout Florida and a statewide airboat association called the Florida Airboat Association (FAA). The FAA was established in 1994 and according to its website (www.flairboat.com) is "dedicated to the conservation of our natural resources, the preservation of sportsmen's rights and the promotion of boating safety through community involvement and public education." In addition to the statewide airboat association, there are a number of local airboat associations, including:

- Brevard Airboat and Powerboat Association
- Broward County Airboat, Halftrack, and Conservation Club
- Citrus County Airboat Alliance
- Glades Airboat and Buggy Association

- Highlands Airboat Association
- Indian River County Boat Association
- Kissimmee River Valley Sportsman Association
- Lake County Airboat Association
- Lake Okeechobee Airboat Association
- National Airboat Racing Association (Florida branch)
- Osceola Airboat Association
- Orange County Airboat Association
- Palm Beach County Airboat and Halftrack Conservation Club
- Peace River Valley Airboat Club
- Seminole County Airboat Club
- Volusia County Airboat Association
- Airboat Association of Florida
- West Coast Airboat Club
- Withlacoochee Region Airboat Association

Current Law

Chapter 327, F.S., the Florida Vessel Safety Law, provides the FWCC with authority over the operation, regulation, and safety of vessels on Florida waters. Section 327.02(37), F.S., defines a vessel to be synonymous with "boat" as referenced in s. 1(b), Art. VII of the State Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Sections of Chapter 327 address numerous issues relating to the regulation of vessels including such areas as: the reporting of accidents (s. 327.30, F.S.); reckless and careless operation of vessels (s. 327.33, F.S.); boating under the influence (s. 327.35, F.S.); testing for alcohol, chemical or controlled substances (s. 327.352, F.S.); personal watercraft regulations (s. 327.39, F.S.); boating safety courses and identification cards (s. 327.395, F.S.); the creation of the Boating Advisory Council (s. 327.803, F.S.); and muffling devices on vessels (s. 327.65, F.S.).

Section 327.65(1), F.S., requires that the exhaust of every internal combustion engine used on any vessel operated on the waters of the state must be "effectively muffled" by equipment constructed and used to muffle the noise of the exhaust in a "reasonable manner." The use of "muffler cutouts" (cutouts, bypasses or other devices that increase sound pressure levels or change the original manufactured exhaust system of the vessel) is prohibited, except for vessels competing in a boating regatta or official boat race and for vessels while on trial runs.

Section 327.65(2)(a)1., F.S., authorizes counties to impose additional noise pollution and exhaust regulations on vessels by way of county ordinances. A county may adopt an ordinance which prohibits a person from operating any vessel in such a manner as to exceed 90dB A at a distance of 50 feet from the vessel. The term "dB A" means "the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel." "Sound level" means "the A-weighted sound pressure measured with fast response using an instrument complying with the specifications for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided."[3]

Section 327.65(2)(a)2., F.S., provides that any person operating a vessel and who refuses to submit to a sound level test when requested to do so by a law enforcement officer can be cited and could be found guilty of a misdemeanor of the second degree.

[3] Section 327.65(2)(b), F.S.

Section 327.48, F.S., establishes procedures for obtaining a permit for holding a boating regatta, tournament, boat race, marine parade, or exhibition. Should the event be held on navigable waters of the United States, a permit must be secured from the U.S. Coast Guard. For an event held in any county, the person directing the event must notify the County Sheriff or the FWCC at least 15 days prior to the event "in order that appropriate arrangements for safety and navigation may be assured." Ant person directing such events "shall be responsible for providing adequate protection to the participants, spectators, and other users of the water."

Section 369.309, F.S., prohibits the operation of airboats on the Wekiva River System. An exemption is provided in the case of an emergency or to an employee of a municipal, county, state, or federal agency or their agents on official government business. Persons convicted for violation this prohibition shall be guilty of a second degree misdemeanor punishable as provided in s. 775.082 or s. 775.083, F.S.

Airboats and Noise Issues

According to the FWCC, the language in s. 327.65(1), F.S., regarding a vessel's (including airboats) exhaust to be "effectively muffled . . . in a reasonable manner," lacks specificity and allows for considerable room for interpretation. The FWCC, adopting the interpretation by the former Game and Fresh Water Fish Commission, permitted the use of "flex-pipe" (flexible tubing that diverts engine exhaust to behind the airboat) as an effective muffling device for airboats. Such devices became common and accepted by the airboat community. However, as the number of waterfront residences and airboats has increased over the years, the "effectiveness" of muffling airboats with "flex-pipe" has raised considerable concerns related to the noise of airboats on Florida's waterways.

In 2003, a bill was filed (SB 1012) which would have restricted airboat noise statewide to 90 decibels at 50 feet. The bill was heard in the Senate Natural Resources Committee and was amended to authorize the FWCC to adopt a rule which would provide a uniform ordinance for vessel sound regulation that could be adopted by any county or municipality. The bill did not pass out of the Senate committee; but there was an expectation that the FWCC would hold public workshops on airboat noise.

Following several public workshops held across the state, the FWCC asked the Florida Boating Advisory Council to develop a code of ethics for airboat operators (see below). In addition, FWCC staff was directed to initiate a research project (see below) that would provide direction on the types of muffling devices that could effectively muffle airboat engines.

Code of Ethics

The FWCC requested the state's Boating Advisory Council to develop an Airboat User Code of Ethics. An April 26, 2004 version of the code of ethics included the following:

- Respect the rights of everyone to enjoy Florida's waterways.
- Learn and observe all State of Florida boating regulations, navigation rules, and vessel safety equipment requirements.
- Recognize that the noise generated from an airboat propeller and engine exhaust system may annoy other people in the area.
- Equip the airboat with an approved muffling device and operate the airboat in a manner that will reduce engine exhaust sound levels.
- Operate an airboat at a slow speed on or near boat ramps and move away from the boat ramp an adequate distance before powering up the airboat, and where possible, no power loading of the airboat on to the trailer.
- Use slow speeds to reduce noise near residential and public use areas.
- Be extra cautious to reduce sound levels of an airboat during nighttime hours.
- Understand that the public will judge all airboat users by the actions of one.
- Protect natural resources and do not needlessly disturb wildlife.

Noise Study

FWCC contracted with a research team from the Florida Atlantic University (FAU) College of Engineering to conduct tests and analysis on airboat sound/noise.

The FWCC/FAU airboat sound/noise research project intended to answer the following questions:

- What level of sound can be obtained from an airboat using various automotive-type muffling devices, "flex-pipe," or other devices on the wider range of airboat propulsion systems?
- How do sound levels generated by an airboat's engine's exhaust compare to those sound levels generated by the airboat's propeller blades?
- To what extent do environmental factors affect the resonance and nature of the sound generated by an airboat?
- What mechanical and technological changes and devices could be developed and used to help quiet airboats?

The research project was conducted on a lake in the Ocala National Forest using 13 different airboat configurations with a variety of different engines, propellers, and mufflers. Sound measurement equipment and methodology were used to record and analyze the sounds generated by the test airboats at idle, 50%, and 100% operating conditions for both stationary and drive-by tests.

The findings from the research project were as follows:

- When running at full speed, airboats noise levels exceeded the current statutorily prescribed 90 decibels at 50 feet.
- When running at full speed, mufflers have little or no effect on the noise radiated by airboats.
- Mufflers do reduce an airboat's radiated noise levels at minimal planing speeds by about 4 decibels.
- At minimum planing speeds or less, most airboats meet the current statutorily prescribed 90 decibel noise limit at 50 feet.
- Flex pipes without mufflers provide some level of noise attenuation at higher airboat engine RPM, but not at lower RPM.
- Measurement of the effect of mufflers on airboats showed that they provide broadband noise attenuation at lower airboat operational speeds.
- When operating under different conditions, the noise level for an airboat's given configuration of engine, gearbox, propeller, and muffler was only a function of engine RPM, and not a function of vessel weight or speed.
- Airboat operators are likely to be at risk of hearing damage and it is likely that noise exposure limits could be exceeded for bystanders in the vicinity of boat ramps where airboats are maneuvering or power loading onto trailers.
- Sound levels generated by airboats when running at full speed are dominated by propeller noise.

In addition, the authors of the research project made the following recommendations:

- Airboat engine and propeller RPM should be minimized to reduce noise levels.
- Airboat propellers should be designed to maximize thrust at lower tip speed to reduce the noise levels of propellers.

Based on these findings and recommendations, on September 21, 2005, the FWCC directed staff to draft a new policy that would require airboats to be equipped with mufflers and that the use of flex-pipes alone would no longer be acceptable to help reduce the noise levels of airboats. FWCC staff also continued to hold public meetings throughout the state for the purpose of taking testimony from the

airboat user community and persons who are or may be adversely affected by the noise generated by airboats.

On January 24, 2006, the FWCC issued a Marine Enforcement Alert establishing a law enforcement protocol requiring airboats to use automotive-style mufflers to reduce engine exhaust sound levels. "Muffler" is defined as "an automotive-style sound suppression device or system designed and installed to abate the sound of exhaust gasses emitted from an internal combustion engine and which prevents excessive or unusual noise."

Through June 2006, the FWCC will implement a formal education effort making airboat operators and users aware of the required muffler provisions and by July 1, 2006, FWCC law enforcement officers will begin an education/enforcement phase where officers will issue warnings for non-compliance and citations for repeated non-compliance. Persons violating the muffler requirement will be charged under Section 327.65(1), F.S., as a failure to meet vessel engine exhaust muffling requirements.

EFFECT OF PROPOSED CHANGES

The bill amends s. 327.02, F.S., to add definitions for the terms "airboat" and "muffler." An "airboat" is defined as "a vessel, designed for use in shallow waters, powered by an internal combustion engine with an airplane-type propeller mounted above the stern used to push air across a single set of rudders." A "muffler" is defined as "a sound suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such engine."

The bill creates s. 327.391, F.S., to provide for the regulation by the FWCC of airboats and their operation and equipment. Specifically, the provisions of the new s. 327.391, F.S.:

- Requires that an airboat must have a muffler on its engine capable of adequately muffling the sound of the exhaust of the engine.
- Prohibits the use of cutouts, except for vessels competing in a regatta or official boat race and for vessels while on trial runs at such events.
- Provides that an airboat cited for a violation of the muffling requirements of the bill, must show proof of the installation of a muffler before the airboat can be operated on the waters of the state.
- Requires airboats to be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be at least 10 inches by 12 inches and international orange in color. Airboat operators not complying with the flag requirement may be cited for a non-criminal infraction.
- Requires persons convicted of two infractions of the airboat muffler and flag requirements to successfully complete a boating safety course.
- Adds newly created airboat requirements to the list of non-criminal infractions.
- Exempt from the requirements of the section a performer engaged in a professional exhibition and persons who are preparing to participate or who are participating in a regatta, race, marine parade, tournament or exhibition which is held in compliance with s. 327.48.

The bill makes conforming changes and corrects cross-references to several sections of statute.

The bill has an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 327.02, F.S., by creating definitions for "airboat" and "muffler. "

Section 2: Creates s. 327.391, F.S., regulating the operation of airboats.

Section 3: Amends s. 327.73, F.S., adding newly created airboat requirements to the list of non-criminal infractions.

Section 4: Amends s. 327.731, F.S., requiring mandatory boating safety education for violators of airboat requirements.

Section 5: Amends s. 320.08, F.S., to conform a cross-reference.

Section 6: Amends s. 328.17, F.S., to conform a cross-reference.

Section 7: Amends s. 342.07, F.S., to conform a cross-reference.

Section 8: Amends s. 616.242, F.S., to conform terminology.

Section 9: Amends s. 713.78, F.S., to conform terminology.

Section 10: Amends s. 715.07, F.S., to conform a cross-reference.

Section 11: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires airboat owners and the airboat industry to modify/retrofit/replace equipment to meet the requirements of this legislation. Costs associated with compliance efforts will vary and cannot be determined at this time.

D. FISCAL COMMENTS:

The bill requires proof of a muffler installation before the airboat can be further operated, if a citation is issued. This would create a tracking obligation on the part of FWCC and the development of an inspection plan to ensure compliance by persons who have been cited for a violation of the muffler requirements of the bill. FWCC is unable to provide a cost estimate for the compliance tracking system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Although not specified in the bill, the bill may require FWCC to adopt rules relating to the operation of airboats and equipment required on airboats.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill addresses the suppression of noise from the operation of airboats emanating from the engine by requiring a specified muffler, the bill does not address nor provide any provisions or requirements that would address the suppression of airboat noise emanating from the airplane-type propeller mounted above the stern of the airboat. Neither does the bill define the terms "effectively" nor "adequately" as they related to requiring mufflers on airboats to effectively abate and adequately muffle the sound from the airboat engine.

FWCC staff has provided the following comments on and concerns with the bill.

The bill specifies muffler requirements for airboat engines. Such muffler equipment requirements are pre-empted by federal regulations as follows:

> "Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title." (TITLE 46 – Shipping, Subtitle II – Vessels and Seamen – Part B – Inspection and Regulation of Vessels CHAPTER 43 – Recreational Vessels, Sec. 4306 – Federal Preemption)

The FWCC has requested an opinion from the U.S. Coast Guard as to whether it is exempt from this rule.

The bill requires an "airboat" cited for a muffler violation to show proof of muffler installation before it is further operated on state waters. The language should refer to "airboat operator" since an "airboat" cannot be cited for a violation. Further, the bill does not specify to whom this proof must be shown or the form this proof must take. This requirement creates a tracking obligation for FWCC and the necessity to develop an inspection plan to ensure compliance by those who have been cited for a muffler violation. The cost for such tracking/inspection plan is not known at this time.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 733. The strike-all amendment makes the following changes to the bill:

- Deletes the provision that airboats be operated in a reasonable and prudent manner.
- Revises the definition of "airboat" by removing the phrase "flat-bottomed."
- Adds the word "effectively" before the word "abate" regarding mufflers.
- Deletes the requirement that airboats be operated in compliance with numerous provisions of Chapter 327, F.S. on vessel safety.
- Deletes the provision that counties and municipalities may adopt ordinances for the operation and equipping of airboats as long as they are not in conflict with the provisions of Chapter 327, F.S., and do not discriminate against airboats.
- Changes the dimensions of the safety flag airboats must have.
- Adds newly created airboat requirements to the list of non-criminal infractions and requires mandatory completion of a boating safety course for multiple violations.

This analysis has been revised to reflect the strike-all amendment.

On April 4, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment making the following changes:

- Prohibiting the use of flex pipe as the sole source of muffling.
- Redefining the penalties associated with violating the muffler specifications.
- Determining the height requirements of the flag which must be displayed.

This analysis has been revised to reflect this additional amendment.

CHAMBER ACTION

---

1 The Agriculture & Environment Appropriations Committee
2 recommends the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to airboats; amending s. 327.02, F.S.;
8 defining the terms "airboat" and "muffler"; conforming
9 terminology; creating s. 327.391, F.S.; providing for
10 regulation of airboat operation and equipment; requiring
11 described sound-muffling device; prohibiting the use of
12 cutouts or flex pipe as the sole source of muffling;
13 requiring display of described flag; providing penalties;
14 providing exceptions; amending s. 327.73, F.S.; providing
15 for penalties, court costs, and procedures for disposition
16 of citations for specified violations; amending s.
17 327.731, F.S.; requiring certain violators to complete a
18 described boating safety course and to file proof of
19 completion with the Fish and Wildlife Conservation
20 Commission prior to operating a vessel; providing for an
21 exemption from the course; amending ss. 320.08, 328.17,
22 342.07, 616.242, 713.78, and 715.07, F.S.; revising cross-

23 references and terminology to conform to changes made by
24 the act; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. Present subsection (37) of section 327.02,
29 Florida Statutes, is amended, subsections (1) through (22) are
30 renumbered as subsections (2) through (23), respectively,
31 subsections (23) through (38) are renumbered as subsections (25)
32 through (40), respectively, and new subsections (1) and (24) are
33 added to that section, to read:
34 327.02 Definitions of terms used in this chapter and in
35 chapter 328.--As used in this chapter and in chapter 328, unless
36 the context clearly requires a different meaning, the term:
37 (1) "Airboat" means a vessel, designed for use in shallow
38 waters, powered by an internal combustion engine with an
39 airplane-type propeller mounted above the stern used to push air
40 across a set of rudders.
41 (24) "Muffler" means an automotive-style sound-suppression
42 device or system designed to effectively abate the sound of
43 exhaust gases emitted from an internal combustion engine and
44 prevent excessive sound when installed on such engine.
45 (39) ~~(37)~~ "Vessel" is synonymous with boat as referenced in
46 s. 1(b), Art. VII of the State Constitution and includes every
47 description of watercraft, barge, and airboat ~~air boat~~, other
48 than a seaplane on the water, used or capable of being used as a
49 means of transportation on water.

50 Section 2. Section 327.391, Florida Statutes, is created
51 to read:
52 327.391 Airboats regulated.--
53 (1) The exhaust of every internal combustion engine used
54 on any airboat operated on the waters of this state shall be
55 provided with an automotive-style factory muffler, underwater
56 exhaust, or other manufactured device capable of adequately
57 muffling the sound of the exhaust of the engine as described in
58 s. 327.02(24). The use of cutouts or flex pipe as the sole
59 source of muffling is prohibited, except as provided in
60 subsection (4). Any person who violates this subsection commits
61 a noncriminal infraction, punishable as provided in s.
62 327.73(1).
63 (2) An airboat operator cited for an infraction of
64 subsection (1) shall not operate the airboat until a muffler as
65 defined in s. 327.02 is installed. A second violation of
66 subsection (1) shall be punishable by a fine of $250, a third
67 violation shall be punishable by a fine of $500, and any
68 subsequent violation shall be punishable by a fine of $500.
69 (3) An airboat may not operate on the waters of the state
70 unless it is equipped with a mast or flagpole bearing a flag at
71 a height of at least 10 feet above the lowest portion of the
72 vessel. The flag must be square or rectangular, at least 10
73 inches by 12 inches in size, international orange in color, and
74 displayed so that the visibility of the flag is not obscured in
75 any direction. Any person who violates this subsection commits a
76 noncriminal infraction, punishable as provided in s. 327.73(1).

77 (4) This section does not apply to a performer engaged in
78 a professional exhibition or a person preparing to participate
79 or participating in a regatta, race, marine parade, tournament,
80 or exhibition held in compliance with s. 327.48.
81 Section 3. Paragraphs (v) and (w) are added to subsection
82 (1) of section 327.73, Florida Statutes, to read:
83 327.73 Noncriminal infractions.--
84 (1) Violations of the following provisions of the vessel
85 laws of this state are noncriminal infractions:
86 (v) Section 327.391(1), relating to requirement for an
87 adequate muffler on an airboat.
88 (w) Section 327.391(3), relating to display of a flag on
89 an airboat.
90
91 Any person cited for a violation of any such provision shall be
92 deemed to be charged with a noncriminal infraction, shall be
93 cited for such an infraction, and shall be cited to appear
94 before the county court. The civil penalty for any such
95 infraction is $50, except as otherwise provided in this section.
96 Any person who fails to appear or otherwise properly respond to
97 a uniform boating citation shall, in addition to the charge
98 relating to the violation of the boating laws of this state, be
99 charged with the offense of failing to respond to such citation
100 and, upon conviction, be guilty of a misdemeanor of the second
101 degree, punishable as provided in s. 775.082 or s. 775.083. A
102 written warning to this effect shall be provided at the time
103 such uniform boating citation is issued.

104 Section 4. Subsection (1) of section 327.731, Florida
105 Statutes, is amended to read:
106 327.731 Mandatory education for violators.--
107 (1) Every person convicted of a criminal violation of this
108 chapter, every person convicted of a noncriminal infraction
109 under this chapter if the infraction resulted in a reportable
110 boating accident, and every person convicted of two noncriminal
111 infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p),
112 and (s)-(w) ~~(s)-(u)~~, said infractions occurring within a 12-
113 month period, must:
114 (a) Enroll in, attend, and successfully complete, at his
115 or her own expense, a boating safety course that meets minimum
116 standards established by the commission by rule; however, the
117 commission may provide by rule pursuant to chapter 120 for
118 waivers of the attendance requirement for violators residing in
119 areas where classroom presentation of the course is not
120 available;
121 (b) File with the commission within 90 days proof of
122 successful completion of the course;
123 (c) Refrain from operating a vessel until he or she has
124 filed the proof of successful completion of the course with the
125 commission.
126
127 Any person who has successfully completed an approved boating
128 course shall be exempt from these provisions upon showing proof
129 to the commission as specified in paragraph (b).
130 Section 5. Paragraphs (d) and (e) of subsection (5) of
131 section 320.08, Florida Statutes, are amended to read:

132 320.08 License taxes.--Except as otherwise provided
133 herein, there are hereby levied and imposed annual license taxes
134 for the operation of motor vehicles, mopeds, motorized bicycles
135 as defined in s. 316.003(2), and mobile homes, as defined in s.
136 320.01, which shall be paid to and collected by the department
137 or its agent upon the registration or renewal of registration of
138 the following:
139 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
140 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--
141 (d) A wrecker, as defined in s. 320.01(40), which is used
142 to tow a vessel as defined in s. 327.02(39) ~~(36)~~, a disabled,
143 abandoned, stolen-recovered, or impounded motor vehicle as
144 defined in s. 320.01(38), or a replacement motor vehicle as
145 defined in s. 320.01(39): $30 flat.
146 (e) A wrecker, as defined in s. 320.01(40), which is used
147 to tow any motor vehicle, regardless of whether or not such
148 motor vehicle is a disabled motor vehicle as defined in s.
149 320.01(38), a replacement motor vehicle as defined in s.
150 320.01(39), a vessel as defined in s. 327.02(39) ~~(36)~~, or any
151 other cargo, as follows:
152 1. Gross vehicle weight of 10,000 pounds or more, but less
153 than 15,000 pounds: $87 flat.
154 2. Gross vehicle weight of 15,000 pounds or more, but less
155 than 20,000 pounds: $131 flat.
156 3. Gross vehicle weight of 20,000 pounds or more, but less
157 than 26,000 pounds: $186 flat.
158 4. Gross vehicle weight of 26,000 pounds or more, but less
159 than 35,000 pounds: $240 flat.

160 5. Gross vehicle weight of 35,000 pounds or more, but less
161 than 44,000 pounds: $300 flat.
162 6. Gross vehicle weight of 44,000 pounds or more, but less
163 than 55,000 pounds: $572 flat.
164 7. Gross vehicle weight of 55,000 pounds or more, but less
165 than 62,000 pounds: $678 flat.
166 8. Gross vehicle weight of 62,000 pounds or more, but less
167 than 72,000 pounds: $800 flat.
168 9. Gross vehicle weight of 72,000 pounds or more: $979
169 flat.
170 Section 6. Subsection (4) of section 328.17, Florida
171 Statutes, is amended to read:
172 328.17 Nonjudicial sale of vessels.--
173 (4) A marina, as defined in s. 327.02(20) ~~(19)~~, shall have
174 a possessory lien upon any vessel for storage fees, dockage
175 fees, repairs, improvements, or other work-related storage
176 charges, and for expenses necessary for preservation of the
177 vessel or expenses reasonably incurred in the sale or other
178 disposition of the vessel. The possessory lien shall attach as
179 of the date the vessel is brought to the marina, or as of the
180 date the vessel first occupies rental space at the marina
181 facility. However, in the event of default, the marina must give
182 notice to persons who hold perfected security interests against
183 the vessel under the Uniform Commercial Code in which the owner
184 is named as the debtor.
185 Section 7. Subsection (2) of section 342.07, Florida
186 Statutes, is amended to read:

187 342.07 Recreational and commercial working waterfronts;
188 legislative findings; definitions.--
189 (2) As used in this section, the term "recreational and
190 commercial working waterfront" means a parcel or parcels of real
191 property that provide access for water-dependent commercial
192 activities or provide access for the public to the navigable
193 waters of the state. Recreational and commercial working
194 waterfronts require direct access to or a location on, over, or
195 adjacent to a navigable body of water. The term includes water-
196 dependent facilities that are open to the public and offer
197 public access by vessels to the waters of the state or that are
198 support facilities for recreational, commercial, research, or
199 governmental vessels. These facilities include docks, wharfs,
200 lifts, wet and dry marinas, boat ramps, boat hauling and repair
201 facilities, commercial fishing facilities, boat construction
202 facilities, and other support structures over the water. As used
203 in this section, the term "vessel" has the same meaning as in s.
204 327.02(39) ~~(37)~~. Seaports are excluded from the definition.
205 Section 8. Paragraph (a) of subsection (10) of section
206 616.242, Florida Statutes, is amended to read:
207 616.242 Safety standards for amusement rides.--
208 (10) EXEMPTIONS.--
209 (a) This section does not apply to:
210 1. Permanent facilities that employ at least 1,000 full-
211 time employees and that maintain full-time, in-house safety
212 inspectors. Furthermore, the permanent facilities must file an
213 affidavit of the annual inspection with the department, on a
214 form prescribed by rule of the department. Additionally, the

215 Department of Agriculture and Consumer Services may consult
216 annually with the permanent facilities regarding industry safety
217 programs.
218 2. Any playground operated by a school, local government,
219 or business licensed under chapter 509, if the playground is an
220 incidental amenity and the operating entity is not primarily
221 engaged in providing amusement, pleasure, thrills, or
222 excitement.
223 3. Museums or other institutions principally devoted to
224 the exhibition of products of agriculture, industry, education,
225 science, religion, or the arts.
226 4. Conventions or trade shows for the sale or exhibit of
227 amusement rides if there are a minimum of 15 amusement rides on
228 display or exhibition, and if any operation of such amusement
229 rides is limited to the registered attendees of the convention
230 or trade show.
231 5. Skating rinks, arcades, lazer or paint ball war games,
232 bowling alleys, miniature golf courses, mechanical bulls,
233 inflatable rides, trampolines, ball crawls, exercise equipment,
234 jet skis, paddle boats, airboats ~~air boats~~, helicopters,
235 airplanes, parasails, hot air or helium balloons whether
236 tethered or untethered, theatres, batting cages, stationary
237 spring-mounted fixtures, rider-propelled merry-go-rounds, games,
238 side shows, live animal rides, or live animal shows.
239 6. Go-karts operated in competitive sporting events if
240 participation is not open to the public.
241 7. Nonmotorized playground equipment that is not required
242 to have a manager.

243 8. Coin-actuated amusement rides designed to be operated
244 by depositing coins, tokens, credit cards, debit cards, bills,
245 or other cash money and which are not required to have a
246 manager, and which have a capacity of six persons or less.
247 9. Facilities described in s. 549.09(1)(a) when such
248 facilities are operating cars, trucks, or motorcycles only.
249 10. Battery-powered cars or other vehicles that are
250 designed to be operated by children 7 years of age or under and
251 that cannot exceed a speed of 4 miles per hour.
252 11. Mechanically driven vehicles that pull train cars,
253 carts, wagons, or other similar vehicles, that are not confined
254 to a metal track or confined to an area but are steered by an
255 operator and do not exceed a speed of 4 miles per hour.
256 Section 9. Paragraph (b) of subsection (1) of section
257 713.78, Florida Statutes, is amended to read:
258 713.78 Liens for recovering, towing, or storing vehicles
259 and vessels.--
260 (1) For the purposes of this section, the term:
261 (b) "Vessel" means every description of watercraft, barge,
262 and airboat ~~air boat~~ used or capable of being used as a means of
263 transportation on water, other than a seaplane or a "documented
264 vessel" as defined in s. 327.02(9) ~~(8)~~.
265 Section 10. Paragraph (b) of subsection (1) of section
266 715.07, Florida Statutes, is amended to read:
267 715.07 Vehicles or vessels parked on private property;
268 towing.--
269 (1) As used in this section, the term:

270 (b) "Vessel" means every description of watercraft, barge,
271 and airboat used or capable of being used as a means of
272 transportation on water, other than a seaplane or a "documented
273 vessel" as defined in s. 327.02(9) ~~(8)~~.
274 Section 11. This act shall take effect October 1, 2006.

Amendment No.1

Bill No. **HB 733 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Dean offered the following:
3
4 **Amendment**
5 Remove line(s) 60-68 and insert:
6 subsection (4). Any person who violates this subsection shall
7 be guilty of a noncriminal infraction punishable as provided in
8 s. 327.73(1). A second violation of this subsection within 12
9 months shall be punishable by a fine of $250, a third violation
10 within 12 months shall be punishable by a find of $500, and any
11 subsequent violation shall be punishable by a fine of $500.
12 (2) An airboat operator cited for an infraction of
13 subsection (1) shall not operate the airboat until a muffler as
14 defined in s. 372.02 is installed.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Dean offered the following:
3
4 **Amendment (with title amendment)**
5 Between line(s) 80 and 81 insert:
6 Section 3. Effective July 1, 2006, subsection (1) of
7 section 327.60, Florida Statutes, is amended to read:
8 327.60 Local regulations; limitations.--
9 (1) The provisions of ss. 327.01, 327.02, 327.30-327.40,
10 327.44-327.50, 327.54, 327.56, 327.65, 328.40-328.48, 328.52-
11 328.58, 328.62, and 328.64 shall govern the operation,
12 equipment, and all other matters relating thereto whenever any
13 vessel shall be operated upon the waterways or when any activity
14 regulated hereby shall take place thereon. Nothing in these
15 sections shall be construed to prevent the adoption of any
16 ordinance or local law relating to operation and equipment of
17 vessels, except that no such ordinance or local law may apply to
18 the Florida Intracoastal Waterway and except that such
19 ordinances or local laws shall be operative only when they are
20 not in conflict with this chapter or any amendments thereto or
21 regulations thereunder. Any ordinance or local law which has

22 been adopted pursuant to this section or to any other state law
23 may not discriminate against personal watercraft as defined in
24 s. 327.02. Effective July 1, 2006, any ordinance or local law
25 adopted pursuant to this section or any other state law may not
26 discriminate against airboats except by a super majority vote of
27 the governing body enacting such ordinance.
28
29 ========== T I T L E A M E N D M E N T ==========
30 Remove line 14 and insert:
31 providing exceptions; amending s. 327.60, F.S.; prohibiting an
32 ordinance or local law from discriminating against airboats;
33 amending s. 327.73, F.S.; providing
34

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 733 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Dean offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line 274 and insert:
6 Section 12. Except as otherwise expressly provided in this
7 act and except for this section, which shall take effect upon
8 becoming a law, this act shall take effect October 1, 2006.
9
10 ========== T I T L E A M E N D M E N T ==========
11 Remove line 24 and insert:
12 the act; providing effective dates.

HB 1039 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1039 CS Miami-Dade County Lake Belt Area
SPONSOR(S): Garcia and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	8 Y, 0 N	Winker	Lotspeich
2) Finance & Tax Committee	8 Y, 0 N, w/CS	Monroe	Diez-Arguelles
3) Agriculture & Environment Appropriations Committee	10 Y, 0 N	Dixon	Dixon
4) State Resources Council		Winker KW	Hamby
5)			

SUMMARY ANALYSIS

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning January 1, 2007, 18 cents per ton beginning January 1, 2008, and 24 cents per ton beginning January 1, 2009.
- Revises the date from January 1, 2001, to January 1, 2010, on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds of the mitigation fee.

The bill will have a positive fiscal impact on the revenue deposited into the Lake Belt Mitigation Trust Fund from approximately $3 million in 2005 to $10 million in 2009, due to three annual increases in the mitigation fee.

The bill will take effect January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill increases the mitigation fee for the mining industry in the Lake Belt Area.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Miami-Dade Lake Belt Area comprises 77.5 square miles of environmentally sensitive land located in the western edge of the Miami-Dade County urban area. This area consists of wetlands and lakes which act potentially as a buffer between the Everglades and the encroachment of urban development. The area is also used for mining limestone and sand, with rock mined from the area supplying about one-half of all the limestone used in Florida. The Northwest Wellfield, which is located at the eastern edge of the area, is the largest drinking water wellfield in the state and supplies about 40 percent of the potable drinking water for Miami-Dade County. About 50% of the land within the Lake Area is owned by the mining industry, 25% is owned by government agencies, and 25% is owned by non-mining private owners.

Section 373.4139, F.S., established the Lake Belt Committee for the purpose of developing a long-term plan for the Lake Belt Area. In February 1997, and February 2001, this committee submitted reports to the Legislature with findings, recommendations, and a plan for the Lake Belt Area.

Based on these findings and recommendations, s. 373.4149, F.S., was enacted which adopted the plan intended to enhance the water supply for Miami-Dade County and the Everglades, including the development of wellfield protection measures, while maximizing the efficient recovery of limestone, promoting the social and economic welfare of the community, and protecting the environment.

A major recommendation from the Lake Belt Committee was that in order to offset the impacts of rock mining in the Lake Belt Area, this activity needed to be offset by the implementation of a mitigation plan.

Section 373.41492, F.S., enacted the mitigation plan by requiring the assessment of a per-ton mitigation fee assessed on limestone and sand sold from the Lake Belt Area. Fees collected from such sales are to be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes.

Section 373.41492(2), F.S., provides that, effective October 1, 1999, 5 cents for each ton of limerock and sand sold from within the Lake Belt Area will be assessed. The limerock or sand miner who sells the limerock or sand is required to collect the mitigation fee and send the fee to the Department of Revenue (DOR). Proceeds of the fee, less administrative costs for the DOR, are then transferred to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund created under s. 373.41495, F.S.

Section 373.41492(5), F.S., provides that effective January 1, 2001, and each January 1 thereafter, the per-ton mitigation fee must be increased by 2.1 percentage points, plus a cost growth index. Based upon this rate schedule, the mitigation fee for 2005 was 7 cents per ton.

All proceeds from the mitigation fee are to be used for mitigation activities that offset the loss of the value and functions of wetlands as a result of mining activities in the Lake Belt Area. Mitigation activities include the following:

- The purchase, enhancement, restoration, and management of wetlands and uplands.
- The purchase of mitigation credit from a permitted mitigation bank pursuant to s. 373.4136, F.S.
- Structural modifications to the existing drainage system to enhance the hydrology of the Lake Belt Area.
- Reimbursement to other funding sources, including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund, for the purchase of lands acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land for mitigation due to rock mining.

Section 373.41492(6)(b), F.S., creates a Lake Belt Area mitigation fee interagency committee consisting of representatives from the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. A representative of the limerock mining industry is a non-voting member of the committee. The interagency committee is required to submit a report to the Legislature with recommendations for any needed adjustments to the mitigation fee (s. 373.41492(8), F.S.).

Effect of Proposed Changes

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning January 1, 2007, 18 cents per ton beginning January 1, 2008, and 24 cents per ton beginning January 1, 2009.
- Revises the date from January 1, 2001 to January 1, 2010, on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds from the mitigation fee.

The bill will take effect January 1, 2007.

C. SECTION DIRECTORY:

Section 1: Amends s. 373.4149, F.S., changes the boundaries of the Lake Belt Area.

Section 2: Amends s. 373.41492, F.S., increases the mitigation fee for each ton of limerock and sand sold in the Lake Belt Area.

Section 3: The bill takes effect on January 1, 2007.

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:

According to the South Florida Water Management District, approximately $3 million in fee revenues from about 43 million tons of limerock and sand mined were deposited into the Lake Belt Mitigation Trust Fund in 2005.

Under the new mitigation fee rates provided for in the bill, an estimated $5.2 million in fee revenues would be deposited in the trust fund at the 12 cents level (effective Janaury 1, 2007); $7.8 million effective January 1, 2008, and $10.3 million effective January 1, 2009. Effective January 1, 2010 and each January 1 thereafter, the mitigation fee will increase by 2.1%, plus a cost growth index which will further increase the fee revenues deposited in the trust fund.

These increases in the mitigation fees should increase revenues to local governments for mitigation activities expenses.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increased mitigation fees will have a negative fiscal impact upon the mining industry in the Lake Belt Area.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2006, the Committee on Finance and Tax adopted two amendments to this bill. The first amendment changed the dates of adjustments to the mitigation rate from October 1 to January 1. The second amendment changed the effective date from October 1, 2006 to January 1, 2007. These changes were suggested by the Department of Revenue due to technical difficulties with the October 1 date.[1]

[1] In their analysis of this bill, the Department of Revenue wrote: "The . . . requirement to calculate the adjustments to the mitigation fee based upon specific indexes from the United States Department of Labor for the 12 month period ending September 30 of each year and an adjusted mitigation fee effective October 1 of the same year can not be done. Indexes such as the Consumer Price Index are published as much as three or more months following the reported month. Index information for September of a given year is not available until sometime in December of that year, at the earliest." The Department went on to recommend that the rate changes be made effective on January 1, three months later than the bill had the rate changes occurring. For similar reasons, the Department also asked for the bills effective date to be moved to January 1, 2007

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Miami-Dade County Lake Belt Area;
7 amending s. 373.4149, F.S.; revising the geographic
8 boundaries of the Miami-Dade County Lake Belt Area;
9 amending s. 373.41492, F.S.; revising the geographic
10 boundaries for mining areas subject to mitigation fees
11 under the Miami-Dade County Lake Belt Mitigation Plan;
12 providing for mitigation fee increases; authorizing
13 proceeds of mitigation fees to be allocated to the South
14 Florida Water Management District and Miami-Dade County
15 for specific purposes; revising the reporting requirements
16 for the interagency committee; providing an effective
17 date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Subsection (3) of section 373.4149, Florida
22 Statutes, is amended to read:
23 373.4149 Miami-Dade County Lake Belt Plan.--

24 (3) The Miami-Dade County Lake Belt Area is that area
25 bounded by the Ronald Reagan Turnpike to the east, the Miami-
26 Dade-Broward County line to the north, Krome Avenue to the west
27 and Tamiami Trail to the south together with the land south of
28 Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54
29 South, Range 39 East, sections 24, 25, and 36, Township 54
30 South, Range 38 East, less those portions of section 3, Township
31 52 South, Range 39 East south of Krome Avenue and west of U.S.
32 Highway 27, ~~section 10, except the west one-half, section 11,~~
33 ~~except the northeast one-quarter and the east one-half of the~~
34 ~~northwest one-quarter, and tracts 38 through 41, and tracts 49~~
35 ~~through 64 inclusive, section 13, except tracts 17 through 35~~
36 ~~and tracts 46 through 48, of Florida Fruit Lands Company~~
37 ~~Subdivision No. 1 according to the plat thereof as recorded in~~
38 ~~plat book 2, page 17, public records of Miami-Dade County, and~~
39 ~~section 14, except the west three quarters, Township 52 South,~~
40 ~~Range 39 East, lying north of the Miami Canal,~~ and less sections
41 35 and 36 and the east one-half of sections 24 and 25, Township
42 53 South, Range 39 East and Government Lots 1 and 2, lying
43 between Townships 53 and 54 South, Range 39 East and those
44 portions of sections 1 and 2, Township 54 South, Range 39 East,
45 lying north of Tamiami Trail.
46 Section 2. Subsections (2), (5), and (7), paragraph (a) of
47 subsection (6), and paragraph (b) of subsection (9) of section
48 373.41492, Florida Statutes, are amended to read:
49 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
50 mitigation for mining activities within the Miami-Dade County
51 Lake Belt.--

52 (2) To provide for the mitigation of wetland resources
53 lost to mining activities within the Miami-Dade County Lake Belt
54 Plan, effective October 1, 1999, a mitigation fee is imposed on
55 each ton of limerock and sand extracted by any person who
56 engages in the business of extracting limerock or sand from
57 within the Miami-Dade County Lake Belt Area ~~and sections 10, 11,~~
58 ~~13, 14, Township 52 South, Range 39 East,~~ and the east one-half
59 of sections 24 and~~,~~ 25 and all of sections~~,~~ 35~~,~~ and 36, Township
60 53 South, Range 39 East. The mitigation fee is imposed ~~at the~~
61 ~~rate of 5 cents~~ for each ton of limerock and sand sold from
62 within the properties where the fee applies in raw, processed,
63 or manufactured form, including, but not limited to, sized
64 aggregate, asphalt, cement, concrete, and other limerock and
65 concrete products. The mitigation fee imposed by this subsection
66 for each ton of limerock and sand sold shall be 12 cents per ton
67 beginning January 1, 2007, 18 cents per ton beginning January 1,
68 2008, and 24 cents per ton beginning January 1, 2009. Any
69 limerock or sand that is used within the mine from which the
70 limerock or sand is extracted is exempt from the fee. The amount
71 of the mitigation fee imposed under this section must be stated
72 separately on the invoice provided to the purchaser of the
73 limerock or sand product from the limerock or sand miner, or its
74 subsidiary or affiliate, for which the mitigation fee applies.
75 The limerock or sand miner, or its subsidiary or affiliate, who
76 sells the limerock or sand product shall collect the mitigation
77 fee and forward the proceeds of the fee to the Department of
78 Revenue on or before the 20th day of the month following the
79 calendar month in which the sale occurs.

80 (5) Beginning January 1, 2010 ~~2001~~, and each January 1
81 thereafter, the per-ton mitigation fee shall be increased by 2.1
82 percentage points, plus a cost growth index. The cost growth
83 index shall be the percentage change in the weighted average of
84 the Employment Cost Index for All Civilian Workers (ecu 10001I),
85 issued by the United States Department of Labor for the most
86 recent 12-month period ending on September 30, and the
87 percentage change in the Producer Price Index for All
88 Commodities (WPU 00000000), issued by the United States
89 Department of Labor for the most recent 12-month period ending
90 on September 30, compared to the weighted average of these
91 indices for the previous year. The weighted average shall be
92 calculated as 0.6 times the percentage change in the Employment
93 Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times
94 the percentage change in the Producer Price Index for All
95 Commodities (WPU 00000000). If either index is discontinued, it
96 shall be replaced by its successor index, as identified by the
97 United States Department of Labor.
98 (6)(a) The proceeds of the mitigation fee must be used to
99 conduct mitigation activities that are appropriate to offset the
100 loss of the value and functions of wetlands as a result of
101 mining activities and must be used in a manner consistent with
102 the recommendations contained in the reports submitted to the
103 Legislature by the Miami-Dade County Lake Belt Plan
104 Implementation Committee and adopted under s. 373.4149. Such
105 mitigation may include the purchase, enhancement, restoration,
106 and management of wetlands and uplands, the purchase of
107 mitigation credit from a permitted mitigation bank, and any

108 structural modifications to the existing drainage system to
109 enhance the hydrology of the Miami-Dade County Lake Belt Area.
110 Funds may also be used to reimburse other funding sources,
111 including the Save Our Rivers Land Acquisition Program, ~~and~~ the
112 Internal Improvement Trust Fund, the South Florida Water
113 Management District, and Miami-Dade County, for the purchase of
114 lands that were acquired in areas appropriate for mitigation due
115 to rock mining and to reimburse governmental agencies that
116 exchanged land under s. 373.4149 for mitigation due to rock
117 mining ~~rockmining~~.
118 (7) Payment of the fee imposed by this section satisfies
119 the mitigation requirements imposed under ss. 373.403-373.439
120 and any applicable county ordinance for loss of the value and
121 functions from mining of the wetlands identified as rock mining
122 ~~rockmining~~ supported and allowable areas of the Miami-Dade
123 County Lake Plan adopted by s. 373.4149(1). In addition, it is
124 the intent of the Legislature that the payment of the mitigation
125 fee imposed by this section satisfy all federal mitigation
126 requirements for the wetlands mined.
127 (9)
128 (b) No sooner than January 31, 2010, and no more
129 frequently than every 5 ~~10~~ years thereafter, the interagency
130 committee shall submit to the Legislature a report recommending
131 any needed adjustments to the mitigation fee to ensure that the
132 revenue generated reflects the actual costs of the mitigation.
133 Section 3. This act shall take effect January 1, 2007.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Machek offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (3) of section 373.4149, Florida
7 Statutes, is amended to read:
8 373.4149 Miami-Dade County Lake Belt Plan.--
9 (3) The Miami-Dade County Lake Belt Area is that area
10 bounded by the Ronald Reagan Turnpike to the east, the Miami-
11 Dade-Broward County line to the north, Krome Avenue to the west
12 and Tamiami Trail to the south together with the land south of
13 Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54
14 South, Range 39 East, sections 24, 25, and 36, Township 54
15 South, Range 38 East, less those portions of section 3, Township
16 52 South, Range 39 East south of Krome Avenue and west of U.S.
17 Highway 27, ~~section 10, except the west one-half, section 11,~~
18 ~~except the northeast one-quarter and the east one-half of the~~
19 ~~northwest one-quarter, and tracts 38 through 41, and tracts 49~~
20 ~~through 64 inclusive, section 13, except tracts 17 through 35~~
21 ~~and tracts 46 through 48, of Florida Fruit Lands Company~~
22 ~~Subdivision No. 1 according to the plat thereof as recorded in~~

23 ~~plat book 2, page 17, public records of Miami-Dade County, and~~
24 ~~section 14, except the west three quarters, Township 52 South,~~
25 ~~Range 39 East, lying north of the Miami Canal,~~ and less sections
26 35 and 36 and the east one-half of sections 24 and 25, Township
27 53 South, Range 39 East and Government Lots 1 and 2, lying
28 between Townships 53 and 54 South, Range 39 East and those
29 portions of sections 1 and 2, Township 54 South, Range 39 East,
30 lying north of Tamiami Trail.
31 Section 2. Subsections (2), (5), and (7), paragraph (a) of
32 subsection (6), and paragraph (b) of subsection (9) of section
33 373.41492, Florida Statutes, are amended to read:
34 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
35 mitigation for mining activities within the Miami-Dade County
36 Lake Belt. --
37 (2) To provide for the mitigation of wetland resources
38 lost to mining activities within the Miami-Dade County Lake Belt
39 Plan, effective October 1, 1999, a mitigation fee is imposed on
40 each ton of limerock and sand extracted by any person who
41 engages in the business of extracting limerock or sand from
42 within the Miami-Dade County Lake Belt Area ~~and sections 10, 11,~~
43 ~~13, 14, Township 52 South, Range 39 East,~~ and the east one-half
44 of sections 24 and~~,~~ 25 and all of sections~~,~~ 35~~,~~ and 36, Township
45 53 South, Range 39 East. The mitigation fee is imposed ~~at the~~
46 ~~rate of 5 cents~~ for each ton of limerock and sand sold from
47 within the properties where the fee applies in raw, processed,
48 or manufactured form, including, but not limited to, sized
49 aggregate, asphalt, cement, concrete, and other limerock and
50 concrete products. The mitigation fee imposed by this
51 subsection for each ton of limerock and sand sold shall be 12
52 cents per ton beginning January 1, 2007, 18 cents per ton
53 beginning January 1, 2008, and 24 cents per ton beginning

54 January 1, 2009. To upgrade a water treatment plant that treats
55 water coming from the Northwest Wellfield in Miami-Dade County,
56 Florida, a water treatment plant upgrade fee is imposed within
57 the same Lake Belt Area subject to the mitigation fee and upon
58 the same kind of mined limerock and sand as the mitigation fee.
59 The water treatment plant upgrade fee imposed by this
60 subsection for each ton of limerock and sand sold shall be
61 fifteen cents per ton beginning on January 1, 2007, and the
62 collection of this fee shall cease once the total amount of
63 proceeds, less administrative costs, collected for this fee
64 reaches one hundred twelve million, five hundred thousand
65 dollars or the amount of the actual monies necessary to design
66 and construct the treatment plant upgrade, whichever is less.
67 Any limerock or sand that is used within the mine from which the
68 limerock or sand is extracted is exempt from the fees. The
69 amount of the mitigation fee and the water treatment plant
70 upgrade fee imposed under this section must be stated separately
71 on the invoice provided to the purchaser of the limerock or sand
72 product from the limerock or sand miner, or its subsidiary or
73 affiliate, for which the ~~mitigation~~ fee ~~applies~~ or fees apply.
74 The limerock or sand miner, or its subsidiary or affiliate, who
75 sells the limerock or sand product shall collect the mitigation
76 fee and the water treatment plant upgrade fee and forward the
77 proceeds of the fees to the Department of Revenue on or before
78 the 20th day of the month following the calendar month in which
79 the sale occurs.
80 (3) The mitigation fee and treatment plant upgrade fee
81 imposed by this section must be reported to the Department of
82 Revenue. Payment of the mitigation and treatment plant upgrade
83 fees must be accompanied by a form prescribed by the Department
84 of Revenue. The proceeds of the mitigation fee, less

85 administrative costs, must be transferred by the Department of
86 Revenue to the South Florida Water Management District and
87 deposited into the Lake Belt Mitigation Trust Fund. The proceeds
88 of the treatment plant upgrade fee, less administrative costs,
89 must be transferred by the Department of Revenue to a trust fund
90 established by Miami-Dade County, Florida for the sole purpose
91 authorized by paragraph (6)(a) of this section. As used in this
92 section, the term "proceeds of the fee" means all funds
93 collected and received by the Department of Revenue under this
94 section, including interest and penalties on delinquent
95 ~~mitigation~~ fees. The amount deducted for administrative costs
96 may not exceed 3 percent of the total revenues collected under
97 this section and may equal only those administrative costs
98 reasonably attributable to the ~~mitigation~~ fees.
99 (4)(a) The Department of Revenue shall administer,
100 collect, and enforce the mitigation and treatment plant upgrade
101 fees authorized under this section in accordance with the
102 procedures used to administer, collect, and enforce the general
103 sales tax imposed under chapter 212. The provisions of chapter
104 212 with respect to the authority of the Department of Revenue
105 to audit and make assessments, the keeping of books and records,
106 and the interest and penalties imposed on delinquent fees apply
107 to this section. The fees may not be included in computing
108 estimated taxes under s. 212.11, and the dealer's credit for
109 collecting taxes or fees provided for in s. 212.12 does not
110 apply to the fees imposed by this section.
111 (b) In administering this section, the Department of
112 Revenue may employ persons and incur expenses for which funds
113 are appropriated by the Legislature. The Department of Revenue
114 shall adopt rules and prescribe and publish forms necessary to

115 administer this section. The Department of Revenue shall
116 establish audit procedures and may assess delinquent fees.
117 (5) Beginning January 1, 2010 ~~January 1, 2001~~, and each
118 January 1 thereafter, the per-ton mitigation fee only shall be
119 increased by 2.1 percentage points, plus a cost growth index.
120 The cost growth index shall be the percentage change in the
121 weighted average of the Employment Cost Index for All Civilian
122 Workers (ecu 10001I), issued by the United States Department of
123 Labor for the most recent 12-month period ending on September
124 30, and the percentage change in the Producer Price Index for
125 All Commodities (WPU 00000000), issued by the United States
126 Department of Labor for the most recent 12-month period ending
127 on September 30, compared to the weighted average of these
128 indices for the previous year. The weighted average shall be
129 calculated as 0.6 times the percentage change in the Employment
130 Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times
131 the percentage change in the Producer Price Index for All
132 Commodities (WPU 00000000). If either index is discontinued, it
133 shall be replaced by its successor index, as identified by the
134 United States Department of Labor.
135 (6)(a) The proceeds of the mitigation fee must be used to
136 conduct mitigation activities that are appropriate to offset the
137 loss of the value and functions of wetlands as a result of
138 mining activities and must be used in a manner consistent with
139 the recommendations contained in the reports submitted to the
140 Legislature by the Miami-Dade County Lake Belt Plan
141 Implementation Committee and adopted under s. 373.4149. Such
142 mitigation may include the purchase, enhancement, restoration,
143 and management of wetlands and uplands, the purchase of
144 mitigation credit from a permitted mitigation bank, and any
145 structural modifications to the existing drainage system to

146 enhance the hydrology of the Miami-Dade County Lake Belt Area.
147 Funds may also be used to reimburse other funding sources,
148 including the Save Our Rivers Land Acquisition Program, ~~and~~ the
149 Internal Improvement Trust Fund, the South Florida Water
150 Management District, and Miami-Dade County, for the purchase of
151 lands that were acquired in areas appropriate for mitigation due
152 to rock mining and to reimburse governmental agencies that
153 exchanged land under s. 373.4149 for mitigation due to
154 rock mining ~~rockmining~~. The proceeds of the water treatment
155 plant upgrade fee shall be used solely to upgrade a water
156 treatment plant that treats water coming from the Northwest
157 Wellfield in Miami-Dade County, Florida. As used in this
158 section, the terms "upgrade a water treatment plant" or
159 "treatment plant upgrade" means those works necessary to treat
160 or filter a surface water source and/or supply.
161 (b) Expenditures of the mitigation fee must be approved by
162 an interagency committee consisting of representatives from each
163 of the following: the Miami-Dade County Department of
164 Environmental Resource Management, the Department of
165 Environmental Protection, the South Florida Water Management
166 District, and the Fish and Wildlife Conservation Commission. In
167 addition, the limerock mining industry shall select a
168 representative to serve as a nonvoting member of the interagency
169 committee. At the discretion of the committee, additional
170 members may be added to represent federal regulatory,
171 environmental, and fish and wildlife agencies.
172 (7) Payment of the mitigation fee imposed by this section
173 satisfies the mitigation requirements imposed under ss. 373.403-
174 373.439 and any applicable county ordinance for loss of the
175 value and functions from mining of the wetlands identified as
176 rock mining ~~rockmining~~ supported and allowable areas of the

177 Miami-Dade County Lake Plan adopted by s. 373.4149(1). In
178 addition, it is the intent of the Legislature that the payment
179 of the mitigation fee imposed by this section satisfy all
180 federal mitigation requirements for the wetlands mined.
181 (9)
182 (b) No sooner than January 31, 2010, and no more
183 frequently than every 5 ~~10~~ years thereafter, the interagency
184 committee shall submit to the Legislature a report recommending
185 any needed adjustments to the mitigation fee to ensure that the
186 revenue generated reflects the actual costs of the mitigation.
187
188
189 ========== T I T L E A M E N D M E N T ==========
190 Remove the entire title and insert:
191 An act relating to the Miami-Dade County Lake Belt Area;
192 amending s. 373.4149, F.S.; revising the geographic
193 boundaries of the Miami-Dade County Lake Belt Area;
194 amending s. 373.41492, F.S.; revising the geographic
195 boundaries for mining areas subject to mitigation fees
196 under the Miami-Dade County Lake Belt Mitigation Plan;
197 providing for mitigation fee increases and imposing a
198 water treatment plant upgrade fee; authorizing proceeds of
199 mitigation fees to be allocated to the South Florida Water
200 Management District and Miami-Dade County for specific
201 purposes; authorizing the proceeds of the water treatment
202 plant upgrade fee to be used for updating a water
203 treatment plant near the Lake Belt Area; revising the
204 reporting requirements for the interagency committee;
205 providing an effective date.
206

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1347 CS Land Management
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 2102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Perkins	Kliner
2) Agriculture & Environment Appropriations Committee	10 Y, 0 N, w/CS	Dixon	Dixon
3) State Resources Council		Perkins RP	Hamby 12C
4)			
5)			

SUMMARY ANALYSIS

The bill, in part:

- Creates the "Babcock Ranch Preserve Act" and establishes the Babcock Ranch Preserve to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the Babcock Ranch Preserve.
- Authorizes the creation of a not-for-profit corporation known as "Babcock Ranch, Inc." which shall assume management of the Babcock Ranch Preserve with input from the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. The Babcock Ranch, Inc., shall manage the land resources including but not limited to the following:
    - Administration and operation of the Babcock Ranch Preserve as a working ranch[1]
    - Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
    - Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
    - Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
    - Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve
    - Develop programs and activities relating to the management of the preserve as a working ranch

  Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc., shall assume all authority to manage the Babcock Ranch Preserve. The preliminary management agreement term is for a five-year period and provides for an automatic extension of an additional five-year period. The bill provides that upon the dissolution of Babcock Ranch, Inc., for any reason, the management responsibilities shall revert to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.
- Provides that the Babcock Ranch, Inc., shall be governed by a nine-member governing board whose members will be appointed no later than 90 days after the initial acquisition of the "Babcock Crescent B Ranch" (Babcock Ranch) by the state.
- Requires Babcock Ranch, Inc., to establish various business operation requirements relating to finances, reports, legal, and development of comprehensive business plan.

The bill provides an appropriation of $310 million from the Land Acquisition Trust Fund to the Department of Environmental Protection for the purchase of the Babcock Ranch contingent upon, but not limited to, the continuation of silviculture operations, tenant farming and hunting policies currently in practice on the ranch. The bill also provides for a distribution schedule of the funds.

[1] Working ranch" to mean those activities necessary to accomplish the goals of multiple use and sustained yield of the renewable surface resources, and includes but is not limited to silvicultural operations regardless of location or species, pasture management, livestock management, native plant nursery operations, apiary operations, sod farming, eco-tourism, tenant farming, hunting leases, and horticultural debris disposal.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve. The bill provides for consulting duties by the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.

Safeguard Individual Liberty: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve. The bill preserves the working ranch currently in operation at the Babcock Ranch.

B. EFFECT OF PROPOSED CHANGES:

Babcock Ranch

The Babcock Ranch covers an area of 143 square miles and is comprised of 81,499 acres in Charlotte County and 9,862 acres in Lee County. The Babcock Ranch is a Florida Forever Group A project which was added to the acquisition list in 2001. The Babcock Ranch is home to the Florida panther, Florida black bear and other threatened and endangered wildlife. The ranch includes large, well managed areas of pine and scrubby flatwoods along with a highly functional freshwater swamp system known as Telegraph Swamp. The acquisition of the Babcock Ranch would complete a massive natural land corridor from Lake Okeechobee to the Gulf of Mexico.

Currently, the Babcock Ranch includes tenant farms for watermelon and tomatoes on about 4,000 acres, 1,000 acres of sod farming, 2,000 acres of permitted mining activities, and 20,000 acres of improved pasture land. Public access to 6,000 acres covering six miles is provided through guided eco-tours by Babcock Wilderness Adventures, Inc. Hunting activities are authorized on 61,000 acres through 22 private annual hunting leases covering an average of 5,000 acres per lease. Prescribed burning activities are conducted on approximately 25,000 acres and 72,000 acres are in native vegetation and are grazed rotationally. As it relates to hunting leases, tenant farming and cypress tree harvesting presently performed on the Babcock Ranch, the property owner representative reported that these activities generated revenue of approximately $2.2 million last year.[2]

On November 22, 2005, the Board of Trustees of the Internal Improvement Trust Fund approved the Agreement for Sale and Purchase for the state to acquire approximately 74,000 acres of the Babcock Ranch for a total price of $350 million. As part of the acquisition agreement, Babcock Ranch Management, LLC, has agreed to manage all land to be purchased by the State in accordance with the state's land management plan that will be developed after the initial acquisition in July 2006. The preliminary management agreement will preserve and sustain the quality of the property as conservation land, as a working ranch, and silviculture operation which shall include in part:

- Cattle ranching, timber management and harvesting, Florida native plant nursery, apiary (bee) operations, sod farm, or any form of agriculture in present use on the property
- Eco-tourism, natural resource based recreation such as hiking, hunting, and fishing
- Horticultural debris disposal business
- Tenant farming

[2] Arnie Sarlo, Vice President/General manager, Babcock Florida Company

The preliminary management agreement provides that the manager of the ranch is entitled to all revenues from operations from the ranch. During the first five-year management period, the manager must reinvest not less than 50 percent of all net revenues, from which employee salaries and benefits may not be deducted, in the management, maintenance and improvement of the property. If the preliminary management agreement is extended for a second five-year period, the reinvestment percentage increases by 10 percent each year until it reaches 90 percent. This preliminary management agreement will be for a five-year period and provides for an automatic extension of an additional five year period.

Due to the complexity of balancing a working ranch, outdoor recreation and wildlife management, the state is proposing that a not-for-profit entity be established to manage the ranch. Pending approval and creation by the Legislature, the non-profit entity would have a board of directors with a diverse range of expertise in land management, ranch operations, wildlife management and outdoor recreation. Following the fulfillment of Babcock Ranch Management, LLC, obligations, the not-for-profit entity would assume full responsibility for managing the land and ranch.

Effect of Proposed Change

The bill creates section 259.106, F.S., to be cited as the "Babcock Ranch Preserve Act." The bill provides that the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

Babcock Ranch Preserve
The bill provides definitions relating to the act and upon the acquisition of the Babcock Ranch by the Board of Trustees of the Internal Improvement Trust Fund, there is established the "Babcock Ranch Preserve." The Babcock Ranch acquisition is a conservation acquisition with a goal of sustaining the ecological and economic integrity of the property being acquired while allowing the business of the ranch to operate and prosper. The Babcock Ranch Preserve is established to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the preserve. The bill provides that except for the enumerated duties of the Commissioner of Agriculture and the enumerated duties of the Fish and Wildlife Conservation Commission provided in s. 9, Art. IV, of the State Constitution, the Babcock Ranch Preserve shall be managed by Babcock Ranch, Inc.

Babcock Ranch, Inc.
The bill states that the management regime will best be provided through the creation of a non-profit, public-private entity that is capable of developing and implementing environmentally sensitive, cost effective, and creative methods to manage and operate a working ranch. The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," that will be registered, incorporated, organized, and operated in this state and not be a unit or entity of state government. Babcock Ranch, Inc., is organized on a nonstock basis. The purpose of Babcock Ranch, Inc., is to provide the following:

- Management and administrative services for the Babcock Ranch Preserve
- Establish and implement management policies
- Cooperate with state agencies to further the purposes for which the Babcock Ranch Preserve was created
- Establish the administrative and accounting procedures for the operation of the Babcock Ranch, Inc.

The bill provides that the Babcock Ranch, Inc., is subject to the provisions of chapter 119, F.S., relating to public records and those provisions of chapter 286, F.S., relating to public meetings and records for any meetings of Babcock Ranch, Inc. The dissolvement of Babcock Ranch, Inc., may only occur by an act of the Legislature.

The bill authorizes Babcock Ranch, Inc., the ability to appoint and utilize advisory committees to assist in the particular function for which the committee was established. The bill provides that Babcock Ranch, Inc., and its officers and employees shall participate in the management of the Babcock Ranch Preserve in an "advisory capacity only" until the management agreement executed by Babcock Ranch Management, LLC, and the Board of Trustees of the Internal Improvement Trust Fund, Fish and Wildlife Conservation Commission, and Department of Agriculture and Consumer Services, and Lee County is terminated or expires. The bill requires on or before the date on which title to the Babcock Ranch is vested in the state, Babcock Ranch Management, LLC, is to provide Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services their management plan and business plan in place for the operation of the ranch as of November 22, 2005, the date on which the Board of Trustees of the Internal Improvement Trust Fund approved the acquisition.

Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc., shall assume all authority to manage the Babcock Ranch Preserve as a working ranch.

The bill provides that Babcock Ranch, Inc., shall assume management of the Babcock Ranch Preserve with input from Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. The Babcock Ranch, Inc., shall manage the land resources including but not limited to the following:

- Administration and operation of the Babcock Ranch Preserve as a working ranch
- Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
- Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
- Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
- Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve
- Develop programs and activities relating to the management of the preserve as a working ranch

The bill requires Babcock Ranch, Inc., to develop reasonable procedures for entering into lease agreements and other agreements for the use and occupancy of the facilities of the Babcock Ranch Preserve and their negotiation thereof. State laws and rules governing the procurement of commodities and services by state agencies shall apply to Babcock Ranch, Inc. The bill requires the Babcock Ranch, Inc., to provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status.

The bill provides that Babcock Ranch, Inc., may not:

- Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real property, or any interest therein, wherever situated, except as otherwise provided in the act, in developing and implementing the working ranch's comprehensive business plan.
- Sell, convey, mortgage, pledge, lease, exchange, transfer, or dispose of any real property, except as otherwise provided in the act.
- Purchase, take, receive, subscribe for, or otherwise dispose of, or otherwise use and deal in and with, shares and other interests in other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or any governmental entity.
- Lend money for its purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds lent or invested.
- Merge with other corporations or other business entities.
- Enter into any contract, lease, or other agreement related to the use of ground or surface waters on or through property without the consent of the Board of Trustees of the Internal Improvement

Trust Fund, and permits that may be required by the Department of Environmental Protection or appropriate water management district.

- Grant any easements. Any easements granted within the Babcock Ranch Preserve must be executed by the Board of Trustees of the Internal Improvement Trust Fund. Any easements granted within the Babcock Ranch Preserve titled in the name of a local government must be granted by the governing body of that local government.
- Enter into any contract, lease, or other agreement related to the use and occupancy of the Babcock Ranch Preserve for a period of greater than 10 years.

The bill provides that nothing in the act is construed to interfere with or prevent the ability of Babcock Ranch, Inc., to implement agricultural practices authorized by agricultural land use designations established in the local comprehensive plans of either Charlotte County or Lee County as those plans apply to the Babcock Ranch Preserve, so long as such plans are not in conflict with this section or general law.

The bill authorizes Babcock Ranch, Inc., to assess independent reasonable fees for admission to utilize the Babcock Ranch Preserve to offset the costs of operating the Babcock Ranch Preserve as a working ranch.

The bill provides that upon the dissolution of Babcock Ranch, Inc., for any reason, the management responsibilities shall revert to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services unless otherwise provided by the Legislature.

Board of Directors

The bill provides that the Babcock Ranch, Inc., shall be governed by a nine-member governing board whose members will be appointed no later than 90 days after the initial acquisition of the Babcock Ranch by the state. The table below illustrates the composition of the board of directors:

Babcock Board of Directors Member Appointment	Qualification Criteria	Term Limits
Board of Trustees of the Internal Improvement Trust Fund (Four members)	• One appointee must have expertise in domestic livestock management, production, and marketing, including range management and livestock business management • One appointee must have expertise in the management of game and nongame wildlife fish populations, including hunting, fishing, and other recreational activities • One appointee must have expertise in the sustainable management of forest lands for commodity purposes • One appointee must have expertise in financial management, budget and program analysis, and small business operations	• Four initial members (4-yrs.)
Fish and Wildlife Conservation Commission (One member)	One member who has expertise in hunting, fishing, nongame species management or wildlife habitat management, restoration, and conservation.	One initial member (2 –yrs.)
Commissioner of Agriculture (One member)	One member with expertise in agricultural operations or forestry management	One initial member (2 –yrs.)
Babcock Ranch Management, LLC (One member)	One member who has expertise in the activities and management of the Babcock Ranch as of the date of acquisition by the state. The member shall serve only until the termination of the preliminary management agreement. Upon termination of the preliminary management agreement, the person serving as the head of the property owner's association, if any, required to be created under the acquisition agreement shall serve as a member.	One initial member (2 –yrs.)
Charlotte County Board of County Commissioners (One member)	One member who shall be a resident of Charlotte County and who shall be active in an organization concerned with the activities of the ranch.	One initial member (2 –yrs.)
Lee County Board of County Commissioners	One member who shall be a resident of Lee County and who shall have expertise in land conservation and management. This	One initial member (2 –yrs.)

(One member)	appointee shall serve as a member as long as the county participates in the state management plan.	
Note Relating To Term Limits: Each member appointed after the initial appointments be appointed to a 4-year term. Any vacancy among the trustees shall be filled in the same manner as the original appointment and any trustee appointed to fill a vacancy shall be appointed for the remainder of that term. No trustee may serve more than 8 years in consecutive terms.		
Meeting Requirements: At least three times per year at the call of the chair in Charlotte or Lee County in sessions open to the public.		
Chair and Vice Chair Election and Duties: Members shall annually elect a chair and vice chair from among their membership and may by a vote of five of the nine members, remove a member from the position of chair or vice chair prior to the expiration of the position. The chair shall ensure that records are kept of the proceedings of the board and is the custodian of certain official documents. Officers and employees of Babcock Ranch, Inc. are not employees of the state but are private employees. At the request of the trustee's, the state may provide state employees for the purpose of assist the trustees to implement the requirements of this bill. Any state employee assisting for more than 30 days shall be provided on a reimbursable basis. Reimbursement to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services shall be made from the Babcock Ranch, Inc. operating fund and not from any funds appropriated by the Legislature.		
Board Member Removal: Each member is accountable for the proper performance of the duties of office, and each member owes a fiduciary duty to the people of the state to ensure funds are disbursed and used as prescribed by law and contract. Any official appointing member may remove that member pursuant to certain criteria in the bill.		
Board Member Compensation: Members serve without compensation, but are entitled to receive per diem and travel expenses as provided by section. 112.061, F.S., while in the performance of their duties. These expenses shall be paid for out of an operating fund of the preserve.		
Board Member Powers and Duties: The board of directors shall adopt articles of incorporation and bylaws necessary to govern its activities which must be approved by the Board of Trustees of the Internal Improvement Trust Fund prior to filing with the Department of State. The board of directors shall review and approve any management plan for the management of lands in the preserve prior to submission of that plan to the Board of Trustees of the Internal Improvement Trust Fund for approval and implementation. The board of directors will have all necessary and proper powers for the exercise of the authorities vested in Babcock Ranch, Inc., including, but not limited to, the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities. All funds received by Babcock Ranch, Inc., shall be deposited into an authorized operating fund unless otherwise directed by the Legislature. The board of directors may, in consultation with the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, designate hunting, fishing, and trapping zones and establish additional periods when hunting, fishing, or trapping are not permitted for reasons of public safety, administration, and the protection and enhancement of nongame habitat and nongame species.		

The bill states that a Board Member may not:

- Be an officer, a director, or a shareholder in any entity that contracts with or receives funds from the Babcock Ranch, Inc., or its subsidiaries with the exception of the Babcock Ranch Management, LLC, appointee.
- Be an employee of any governmental entity.
- Vote in any official capacity upon any measure that would inure to their private gain or loss; that would inure to the special private gain or loss of any principal by who the member is retained or to the parent organization or subsidiary of a principal by which the member is retained; or that the member would inure to the special private gain or loss of a relative or business associate of the member. Prior to any vote being taken, the member shall publicly state the nature of the member's interest in the matter from which the member is abstaining from voting and no later than 15 days after the vote occurs, disclose the nature of the member's interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.
- Vote by proxy.
- Increase the number of its members.

Babcock Ranch, Inc., Financial Matters

The bill provides for the board of directors to establish and manage an operating fund, with a cash balance reserve that is equal to not more than 25 percent of its annual operating expenses, for the unique cash-flow needs associated with facilitating the fiscal management of Babcock Ranch, Inc. The bill stipulates that upon dissolution of Babcock Ranch, Inc., any remaining cash balances of funds shall revert back to the General Revenue Fund or to other state funds consistent with any appropriated funding.

The bill requires the board of directors to prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the initial acquisition of the Babcock

Ranch by the state. The Department of Agriculture and Consumer Services is directed to provide assistance relating to the annual budget request for appropriations and may not deny a request or refuse to include in its annual legislative budget submission a request for appropriations from Babcock Ranch, Inc.

The bill stipulates that all moneys received from donations or from the management of the Babcock Ranch Preserve shall be retained by Babcock Ranch, Inc., in the operating fund and shall be available for the various operational expenses. Moneys received by Babcock Ranch, Inc., from the management of the Babcock Ranch Preserve are not subject to distribution to the state unless stipulated otherwise in this bill. The bill requires Babcock Ranch, Inc., to optimize the generation of income based on existing market conditions to the extent activities do not unreasonably diminish the long-term environmental, agricultural, scenic, and natural values of the Babcock Ranch Preserve, or the multiple-use and sustained-yield capability of the land.

Babcock Ranch, Inc., Reporting Requirements

The bill requires the board of directors to provide for an annual financial audit by an independent certified public accountant. The audit report is required to be submitted no later than three months after the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and fiscal committees of the Legislature. The bill authorizes certain other governmental entities to receive from the Babcock Ranch, Inc., or from the independent auditor, any records relative to the operation of Babcock Ranch, Inc.

The bill requires by January 15 of each year, Babcock Ranch, Inc., to submit a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year along with goals for that current year to the Board of Trustees of the Internal Improvement Trust Fund, the President of the Senate, the Speaker of the House of Representatives, the Department of Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission.

Babcock Ranch, Inc., Legal and Insurance Related Maters

The bill requires all parties in contract and that hold a lease with Babcock Ranch, Inc., to procure insurance of an amount reasonable or customary to insure against any loss in connection with such properties or with activities authorized in such leases or contracts.

The bill grants Babcock Ranch, Inc., the exclusive right to utilize its corporate name and any seal, emblem, or insignia adopted by the board of directors along with providing certain prohibitions of such use.

Development of Comprehensive Business Plan for Babcock Preserve

The bill requires Babcock Ranch, Inc., not less than two years before it assumes management responsibilities for Babcock Ranch Preserve, to seek input from the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services in order to develop a comprehensive business plan for the Babcock Preserve. The comprehensive business plan must provide for the following:

- Management and operation as a working ranch
- Protection and conservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve.
- Promotion of controlled high-quality hunting experiences for the public, with emphasis on deer, turkey, and other game species.
- Multiple use and sustained yield of renewable surface resources within the Babcock Ranch preserve.
- Public use of and controlled access to the Babcock Ranch Preserve.
- Renewable resource use and management alternatives that benefit local communities and enhance the coordination of management objectives with those on surrounding lands. The use of renewable resources and management alternatives should provide a cost savings to Babcock Ranch, Inc.

The bill provides that the comprehensive business plan for the management and operation of the Babcock Ranch Preserve as a working ranch and amendments to the business plan may be developed with input from the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, and may only be implemented by Babcock Ranch, Inc., upon the expiration of the preliminary management agreement with Babcock Ranch Management, LLC. Decisions to adopt or amend the comprehensive business plan or any activity related to the management of the land shall be made in sessions that are open to the public for comment, and any amendment to the plan regarding agricultural operations of the ranch is not effective until approved by the Commissioner.

C. SECTION DIRECTORY:

Section 1. Creates section 259.106, F.S., relating to the management of the Babcock Ranch Preserve.

Section 2. Provides for an appropriation, with contingencies, and the distribution of funds.

Section 3. Provides the act will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

   Expenditures: See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

D. FISCAL COMMENTS:

The bill provides an appropriation of $310 million from the Land Acquisition Trust Fund to the Department of Environmental Protection for the purchase of the Babcock Ranch contingent upon, but not limited to, the continuation of silviculture operations, tenant farming and hunting policies currently in practice on the ranch. The bill also provides for a distribution schedule of the funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None.

B. RULE-MAKING AUTHORITY:

No additional rule making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Environmental Regulation Committee favorably adopted a "Strike All" amendment to HB 1347. The analysis has been revised to reflect this amendment.

On April 17, 2006, the Agriculture and Environment Appropriations Committee adopted a "strike all" amendment to HB 1347 that made the following changes to the bill:

- Provides a definition for "Working ranch" to mean those activities necessary to accomplish the goals of multiple use and sustained yield of the renewable surface resources, and includes but is not limited to silvicultural operations regardless of location or species, pasture management, livestock management, native plant nursery operations, apiary operations, sod farming, eco-tourism, tenant farming, hunting leases, and horticultural debris disposal.
- Clarifies that no member on the nine member governing board shall be an employee of any governmental entity along with clarifying one member is to be appointed by the FWCC as previously appointed by the executive director of FWCC.
- Provides a technical amendment relating to the name of "Babcock Ranch Management, LLC" to conform to the existing management agreement.
- Provides that any amendment regarding the agricultural operations of the ranch shall not be effective until approved by the commissioner.
- Appropriates $310 million from the Land Acquisition Trust Fund to the Department of Environmental protection to purchase Babcock Crescent B Ranch contingent upon the continuation of silviculture, leased agriculture and hunting policies in practice now on the ranch. The amendment also provides a schedule for the distribution of funds.

The analysis has been revised to reflect this amendment.

CHAMBER ACTION

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1 The Agriculture & Environment Appropriations Committee
2 recommends the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to land management; creating s. 259.106,
8 F.S.; creating the Babcock Ranch Preserve Act; providing
9 definitions; creating Babcock Ranch, Inc., a not-for-
10 profit corporation to be incorporated in the state;
11 providing that the corporation shall act as an
12 instrumentality of the state for purposes of sovereign
13 immunity under s. 768.28, F.S.; providing that the
14 corporation shall not be an agency under s. 20.03, F.S.,
15 or a unit or entity of state government; providing that
16 the corporation is subject to the provisions of chs. 119
17 and 286, F.S., relating to public records and meetings;
18 requiring public records and meetings; providing for the
19 corporation to be governed by a board of directors;
20 providing for the qualifications, appointment, removal,
21 and liability of board members and their terms of office;
22 prohibiting any board member from voting on any measure
23 that constitutes a conflict of interest; providing for the

24 board members to serve without compensation, but to
25 receive per diem and travel expenses; providing for
26 organization and meetings; authorizing state agencies to
27 provide state employees for purposes of implementing the
28 Babcock Ranch Preserve; providing certain powers and
29 duties of the corporation; providing limitations on the
30 powers and duties of the corporation; providing that the
31 corporation and its subsidiaries must provide equal
32 employment opportunities; providing for the corporation to
33 establish and manage an operating fund; requiring an
34 annual financial audit of the accounts and records of the
35 corporation; requiring annual reports by the corporation
36 to the Board of Trustees of the Internal Improvement Trust
37 Fund, the Legislature, the Department of Agriculture and
38 Consumer Services, and the Fish and Wildlife Conservation
39 Commission; requiring that the corporation prepare an
40 annual budget; specifying a goal of financially self-
41 sustaining operation within a certain period; providing
42 for the corporation to retain donations and other moneys;
43 requiring that the corporation adopt articles of
44 incorporation and bylaws subject to the approval of the
45 Board of Trustees of the Internal Improvement Trust Fund;
46 authorizing the corporation to appoint advisory
47 committees; providing requirements for a comprehensive
48 business plan; specifying the procedures by which the
49 corporation shall assume the management and operation of
50 the Babcock Ranch Preserve; prohibiting the corporation
51 from taking certain actions without the consent of the

52 Board of Trustees of the Internal Improvement Trust Fund;
53 requiring that the corporation be subject to certain state
54 laws and rules governing the procurement of commodities
55 and services; authorizing the corporation to assess
56 reasonable fees; providing for management of the Babcock
57 Ranch Preserve until expiration of a current management
58 agreement; providing for reversion of the management and
59 operation responsibilities to certain agencies upon the
60 dissolution of the corporation; providing that the
61 corporation may be dissolved only by an act of the
62 Legislature; providing for reversion of funds upon the
63 dissolution of the corporation; providing for an
64 appropriation subject to specified conditions; providing
65 an effective date.
66
67 WHEREAS, the Babcock Crescent B Ranch comprises the largest
68 private undeveloped single-ownership tract of land in Charlotte
69 County and contains historical evidence in the form of old
70 logging camps and other artifacts that indicate the importance
71 of this land for domesticated livestock production, timber
72 supply, and other bona fide agricultural uses, and
73 WHEREAS, the careful husbandry of the Babcock Crescent B
74 Ranch, including selective timbering, grazing and hunting, and
75 the use of prescribed burning, has preserved a mix of healthy
76 range and timberland with significant species diversity and
77 provides a model for sustainable land development and use, and
78 WHEREAS, the Babcock Crescent B Ranch must be protected for
79 current and future generations by continued operation as a

80 working ranch under a unique management regime that protects the
81 land and resource values of the property and the surrounding
82 ecosystem while allowing and providing for the ranch to become
83 financially self-sustaining, and
84 WHEREAS, it is in the public's best interest that the
85 management regime for the Babcock Crescent B Ranch include the
86 development of an operational program for appropriate
87 preservation and development of the ranch's land and resources,
88 and
89 WHEREAS, the public's interest will be served by the
90 creation of a not-for-profit corporation to develop and
91 implement environmentally sensitive, cost-effective, and
92 creative methods to manage and operate a working ranch, NOW,
93 THEREFORE,
94
95 Be It Enacted by the Legislature of the State of Florida:
96
97 Section 1. Section 259.106, Florida Statutes, is created
98 to read:
99 259.106 Babcock Ranch Preserve; Babcock Ranch, Inc.;
100 creation; membership; organization; meetings.--
101 (1) SHORT TITLE.--This section may be cited as the
102 "Babcock Ranch Preserve Act."
103 (2) DEFINITIONS.--As used in this section, the term:
104 (a) "Babcock Ranch Preserve" and "preserve" mean the lands
105 and facilities acquired in the purchase of the Babcock Crescent
106 B Ranch.

107 (b) "Babcock Ranch, Inc." and "corporation" mean the not-
108 for-profit corporation created under this section to operate and
109 manage the Babcock Ranch Preserve as a working ranch.
110 (c) "Board of directors" means the governing board of the
111 not-for-profit corporation created under this section.
112 (d) "Commission" means the Fish and Wildlife Conservation
113 Commission.
114 (e) "Commissioner" means the Commissioner of Agriculture.
115 (f) "Department" means the Department of Agriculture and
116 Consumer Services.
117 (g) "Financially self-sustaining" means management and
118 operating expenditures not more than the revenues collected from
119 fees and other receipts for resource use and development and
120 from interest and invested funds.
121 (h) "Management and operating expenditures" means expenses
122 of the corporation, including, but not limited to, salaries and
123 benefits of officers and staff, administrative and operating
124 expenses, costs for improvements to and maintenance of lands and
125 facilities of the Babcock Ranch Preserve, and other similar
126 expenses. Such expenditures shall be made from revenues
127 generated from the operation of the ranch and not from funds
128 appropriated by the Legislature except as provided in this
129 section.
130 (i) "Member" means a person appointed to the board of
131 directors of the not-for-profit corporation created under this
132 section.
133 (j) "Multiple use" means the management of all of the
134 renewable surface resources of the Babcock Ranch Preserve to

135 best meet the needs of the public, including the use of the land
136 for some or all of the renewable surface resources or related
137 services over areas large enough to allow for periodic
138 adjustments in use to conform to the changing needs and
139 conditions of the preserve while recognizing that a portion of
140 the land will be used for some of the renewable surface
141 resources available on that land. The goal of multiple use is
142 the harmonious and coordinated management of the renewable
143 surface resources without impairing the productivity of the land
144 and considering the relative value of the renewable surface
145 resources, and not necessarily a combination of uses to provide
146 the greatest monetary return or the greatest unit output.
147 (k) "Sustained yield of the renewable surface resources"
148 means the achievement and maintenance of a high level of annual
149 or regular periodic output of the various renewable surface
150 resources of the preserve without impairing the productivity of
151 the land.
152 (l) "Working ranch" means those activities necessary to
153 accomplish the goals of multiple use and sustained yield of the
154 renewable surface resources and includes, but is not limited to,
155 silvicultural operations, regardless of location or species,
156 pasture management, livestock management, native plant nursery
157 operations, apiary operations, sod farming, ecotourism, tenant
158 farming, hunting leases, and horticultural debris disposal.
159 (3) CREATION OF BABCOCK RANCH PRESERVE.--
160 (a) The acquisition of the Babcock Crescent B Ranch by the
161 Board of Trustees of the Internal Improvement Trust Fund is a
162 conservation acquisition with a goal of sustaining the

163 ecological and economic integrity of the property being acquired
164 while allowing the business of the working ranch to operate and
165 prosper.
166 (b) Upon the date of acquisition of the Babcock Crescent B
167 Ranch, there is created the Babcock Ranch Preserve, which shall
168 be managed in accordance with the purposes and requirements of
169 this section.
170 (c) The preserve is established to protect and preserve
171 the environmental, agricultural, scientific, scenic, geologic,
172 watershed, fish, wildlife, historic, cultural, and recreational
173 values of the preserve, and to provide for the multiple use and
174 sustained yield of the renewable surface resources within the
175 preserve consistent with this section. There shall be no
176 restriction, including reference to location or species, on any
177 silvicultural operation so long as current best management
178 practices adopted by the department are followed. Pasture
179 management, hunting leases, and tenant farming shall be allowed
180 at the discretion of Babcock Ranch, Inc.
181 (d) Babcock Ranch, Inc., and its officers and employees
182 shall participate in the management of the Babcock Ranch
183 Preserve in an advisory capacity only until the comprehensive
184 business plan referenced in paragraph (11)(a) is terminated or
185 expires.
186 (e) Nothing in this section shall preclude Babcock Ranch,
187 Inc., prior to assuming management and operation of the preserve
188 and thereafter, from allowing the use of common varieties of
189 mineral materials such as sand, stone, and gravel for

190 construction and maintenance of roads and facilities within the
191 preserve.
192 (f) Nothing in this section shall be construed as
193 affecting the constitutional responsibilities of the commission
194 in the exercise of its regulatory and executive power with
195 respect to wild animal life and freshwater aquatic life,
196 including the regulation of hunting, fishing, and trapping
197 within the preserve.
198 (g) Nothing in this section shall be construed to
199 interfere with or prevent the ability of Babcock Ranch, Inc., to
200 implement agricultural practices authorized by the agricultural
201 land use designations established in the local comprehensive
202 plans of either Charlotte County or Lee County as those plans
203 apply to the Babcock Ranch Preserve, so long as such plans are
204 not in conflict with this section or general law.
205 (h) Nothing in this section shall preclude the maintenance
206 and use of roads and trails or the relocation of roads in
207 existence on the effective date of this section, or the
208 construction, maintenance, and use of new trails, or any
209 motorized access necessary for the administration of the land
210 contained within the preserve, including motorized access
211 necessary for emergencies involving the health or safety of
212 persons within the preserve.
213 (4) CREATION OF BABCOCK RANCH, INCORPORATED.--
214 (a) There is created a not-for-profit corporation, to be
215 known as Babcock Ranch, Inc., which shall be registered,
216 incorporated, organized, and operated in compliance with the
217 provisions of chapter 617 and which shall not be a unit or

218 entity of state government. For purposes of sovereign immunity,
219 the corporation shall be a corporation primarily acting as an
220 instrumentality of the state but otherwise shall not be an
221 agency within the meaning of s. 20.03(11) or a unit or entity of
222 state government.
223 (b) The corporation is organized on a nonstock basis and
224 shall operate in a manner consistent with its public purpose and
225 in the best interest of the state.
226 (c) Meetings and records of the corporation, its
227 directors, advisory committees, or similar groups created by the
228 corporation, including any not-for-profit subsidiaries, are
229 subject to the public records provisions of chapter 119 and the
230 public meetings and records provisions of s. 286.011.
231 (5) APPLICABILITY OF SECTION.--In any conflict between a
232 provision of this section and a provision of chapter 617, the
233 provision of this section shall prevail.
234 (6) PURPOSE.--The purpose of Babcock Ranch, Inc., is to
235 provide management and administrative services for the preserve,
236 to establish and implement management policies that will achieve
237 the purposes and requirements of this section, to cooperate with
238 state agencies to further the purposes of the preserve, and to
239 establish the administrative and accounting procedures for the
240 operation of the corporation.
241 (7) BOARD; MEMBERSHIP; REMOVAL; LIABILITY.--The
242 corporation shall be governed by a nine-member board of
243 directors who shall be appointed by the Board of Trustees of the
244 Internal Improvement Trust Fund; the commission; the
245 commissioner; the Babcock Ranch Management, LLC, a corporation

246 registered to do business in the state, or its successors or
247 assigns; the Board of County Commissioners of Charlotte County;
248 and the Board of County Commissioners of Lee County in the
249 following manner:
250 (a)1. The Board of Trustees of the Internal Improvement
251 Trust Fund shall appoint four members. One appointee shall have
252 expertise in domesticated livestock management, production, and
253 marketing, including range management and livestock business
254 management. One appointee shall have expertise in the management
255 of game and nongame wildlife and fish populations, including
256 hunting, fishing, and other recreational activities. One
257 appointee shall have expertise in the sustainable management of
258 forest lands for commodity purposes. One appointee shall have
259 expertise in financial management, budget and program analysis,
260 and small business operations.
261 2. The commission shall appoint one member with expertise
262 in hunting; fishing; nongame species management; or wildlife
263 habitat management, restoration, and conservation.
264 3. The commissioner shall appoint one member with
265 expertise in agricultural operations or forestry management.
266 4. The Babcock Ranch Management, LLC, its successors or
267 assigns, shall appoint one member with expertise in the
268 activities and management of the Babcock Crescent B Ranch on the
269 date of acquisition of the ranch by the state. This appointee
270 shall serve on the board of directors only until the termination
271 or expiration of the management agreement. Upon termination or
272 expiration of the management agreement, the person serving as
273 the head of the property owners' association, if any, required

274 to be created under the agreement for sale and purchase shall
275 serve as a member of the Board of Directors of Babcock Ranch,
276 Inc.
277 5. The Board of County Commissioners of Charlotte County
278 shall appoint one member who shall be a resident of the county
279 and who shall be active in an organization concerned with the
280 activities of the ranch.
281 6. The Board of County Commissioners of Lee County shall
282 appoint one member who shall be a resident of the county and who
283 shall have experience in land conservation and management. This
284 appointee, or a successor appointee, shall serve as a member of
285 the board of directors so long as the county participates in the
286 state land management plan.
287 (b) All members of the board of directors shall be
288 appointed no later than 90 days following the initial
289 acquisition of the Babcock Crescent B Ranch by the state.
290 1. Four members initially appointed by the Board of
291 Trustees of the Internal Improvement Trust Fund shall each serve
292 a 4-year term.
293 2. The remaining initial five appointees shall each serve
294 a 2-year term.
295 3. Each member appointed thereafter shall serve a 4-year
296 term.
297 4. A vacancy shall be filled in the same manner in which
298 the original appointment was made, and a member appointed to
299 fill a vacancy shall serve for the remainder of that term.
300 5. No member may serve more than 8 years in consecutive
301 terms.

302 (c) No appointee shall be an employee of any governmental
303 entity.
304 (d) With the exception of the Babcock Ranch Management,
305 LLC, appointee, no member may be an officer, director, or
306 shareholder in any entity that contracts with or receives funds
307 from the corporation or its subsidiaries.
308 (e) No member shall vote in an official capacity upon any
309 measure that would inure to his or her special private gain or
310 loss, that he or she knows would inure to the special private
311 gain or loss of any principal by whom he or she is retained or
312 to the parent organization or subsidiary of a principal by which
313 he or she is retained, or that he or she knows would inure to
314 the special private gain or loss of a relative or business
315 associate of the member. Such member shall, prior to the vote
316 being taken, publicly state the nature of his or her interest in
317 the matter from which he or she is abstaining from voting and,
318 no later than 15 days after the date the vote occurs, shall
319 disclose the nature of his or her interest as a public record in
320 a memorandum filed with the person responsible for recording the
321 minutes of the meeting, who shall incorporate the memorandum in
322 the minutes of the meeting.
323 (f) Each member of the board of directors is accountable
324 for the proper performance of the duties of office, and each
325 member owes a fiduciary duty to the people of the state to
326 ensure that funds provided in furtherance of this section are
327 disbursed and used as prescribed by law and contract. Any
328 official appointing a member may remove that member for
329 malfeasance, misfeasance, neglect of duty, incompetence,

330 permanent inability to perform official duties, unexcused
331 absence from three consecutive meetings of the board, arrest or
332 indictment for a crime that is a felony or misdemeanor involving
333 theft or a crime of dishonesty, or pleading nolo contendere to,
334 or being found guilty of, any crime.
335 (g) Each member of the board of directors shall serve
336 without compensation but shall receive travel and per diem
337 expenses as provided in s. 112.061 while in the performance of
338 his or her duties. These expenses shall be paid from the
339 operating funds of the ranch.
340 (8) ORGANIZATION; MEETINGS.--
341 (a)1. The board of directors shall annually elect a chair
342 and a vice chair from among the board's members. The members
343 may, by a vote of at least five of the nine board members,
344 remove a member from the position of chair or vice chair prior
345 to the expiration of his or her term as chair or vice chair. His
346 or her successor shall be elected to serve for the balance of
347 the removed chair's or vice chair's term.
348 2. The chair shall ensure that records are kept of the
349 proceedings of the board of directors and is the custodian of
350 all books, documents, and papers filed with the board, the
351 minutes of meetings of the board, and the official seal of the
352 corporation.
353 (b)1. The board of directors shall meet upon the call of
354 the chair at least three times per year in Charlotte County or
355 in Lee County.
356 2. A majority of the members of the board of directors
357 constitutes a quorum. Except as otherwise provided in this

358 section, the board of directors may take official action by a
359 majority of the members present at any meeting at which a quorum
360 is present. Members may not vote by proxy.
361 (9) POWERS AND DUTIES.--
362 (a) The board of directors shall adopt articles of
363 incorporation and bylaws necessary to govern its activities. The
364 adopted articles of incorporation and bylaws must be approved by
365 the Board of Trustees of the Internal Improvement Trust Fund
366 prior to filing with the Department of State.
367 (b) The board of directors shall review and approve any
368 management plan prior to the submission of that plan to the
369 Board of Trustees of the Internal Improvement Trust Fund for
370 approval and implementation.
371 (c)1. Except for the constitutional powers of the
372 commission as provided in s. 9, Art. IV of the State
373 Constitution, the board of directors shall have all necessary
374 and proper powers for the exercise of the authority vested in
375 the corporation, including, but not limited to, the power to
376 solicit and accept donations of funds, property, supplies, or
377 services from individuals, foundations, corporations, and other
378 public or private entities for the purposes of this section. All
379 funds received by the corporation shall be deposited into the
380 operating fund authorized under this section unless otherwise
381 directed by the Legislature.
382 2. The board of directors may not increase the number of
383 its members.
384 3. The corporation may not purchase, take, receive, lease,
385 take by gift, devise, or bequest, or otherwise acquire, own,

386 hold, improve, use, or otherwise deal in and with real property,
387 or any interest therein, wherever situated, unless otherwise
388 provided in this section.
389 4. The corporation may not sell, convey, mortgage, pledge,
390 lease, exchange, transfer, or otherwise dispose of any real
391 property, unless otherwise provided in this section.
392 5. The corporation may not purchase, take, receive,
393 subscribe for, or otherwise acquire, own, hold, vote, use,
394 employ, sell, mortgage, lend, pledge, or otherwise dispose of,
395 or otherwise use and deal in and with, shares and other
396 interests in, or obligations of, other domestic or foreign
397 corporations, whether for profit or not for profit,
398 associations, partnerships, or individuals, or direct or
399 indirect obligations of the United States or of any other
400 government, state, territory, government district, municipality,
401 or any instrumentality thereof.
402 6. The corporation may not lend money for its corporate
403 purposes, invest and reinvest its funds, and take and hold real
404 and personal property as security for the payment of funds lent
405 or invested.
406 7. The corporation may not merge with other corporations
407 or other business entities.
408 8. The corporation may not enter into any contract, lease,
409 or other agreement related to the use of ground or surface
410 waters located in, on, or through the preserve without the
411 consent of the Board of Trustees of the Internal Improvement
412 Trust Fund and permits that may be required by the Department of

413 Environmental Protection or the appropriate water management
414 district under chapters 373 and 403.
415 9. The corporation may not grant any easements in, on, or
416 across the preserve. Any easements to be granted for the use of,
417 access to, or ingress and egress across state property within
418 the preserve must be executed by the Board of Trustees of the
419 Internal Improvement Trust Fund as the owners of the state
420 property within the preserve. Any easements to be granted for
421 the use of, access to, or ingress and egress across property
422 within the preserve titled in the name of a local government
423 must be granted by the governing body of that local government.
424 10. The corporation may not enter into any contract,
425 lease, or other agreement related to the use and occupancy of
426 the property within the preserve for a period of greater than 10
427 years.
428 (d) The corporation, in consultation with the commission
429 and the department, may designate hunting, fishing, and trapping
430 zones and may establish additional periods when no hunting,
431 fishing, or trapping shall be permitted for reasons of public
432 safety, administration, and the protection and enhancement of
433 nongame habitat and nongame species, as defined under s.
434 372.001.
435 (e) The corporation shall have the sole and exclusive
436 right to use the words "Babcock Ranch, Inc." and any seal,
437 emblem, or other insignia adopted by the members. Without the
438 express written authority of the corporation, no person may use
439 the words "Babcock Ranch, Inc." as the name under which that
440 person conducts or purports to conduct business, for the purpose

441 of trade or advertisement, or in any manner that may suggest any
442 connection with the corporation.
443 (f) The corporation may from time to time appoint advisory
444 committees to further any part of this section. The advisory
445 committees shall be reflective of the expertise necessary for
446 the particular function for which the committee is created and
447 may include public agencies, private entities, and not-for-
448 profit conservation and agricultural representatives.
449 (g) State laws governing the procurement of commodities
450 and services by state agencies, as provided in s. 287.057, shall
451 apply to the corporation.
452 (h) The corporation and its subsidiaries must provide
453 equal employment opportunities for all persons regardless of
454 race, color, religion, gender, national origin, age, handicap,
455 or marital status.
456 (10) OPERATING FUND; AUDIT; REPORTING REQUIREMENTS; ANNUAL
457 BUDGET.--
458 (a) The board of directors may establish and manage an
459 operating fund to address the corporation's unique cash-flow
460 needs and to facilitate the management and operation of the
461 preserve as a working ranch. A cash balance reserve of not more
462 than 25 percent of the annual management and operating
463 expenditures of the corporation may accumulate and be maintained
464 in the operating fund at any time.
465 (b) The board of directors shall provide for an annual
466 financial audit of the corporate accounts and records to be
467 conducted by an independent certified public accountant in
468 accordance with rules adopted by the Auditor General under s.

469 11.45(8). The audit report shall be submitted no later than 3
470 months following the end of the fiscal year to the Auditor
471 General, the President of the Senate, the Speaker of the House
472 of Representatives, and the appropriate substantive and fiscal
473 committees of the Legislature. The Auditor General, the Office
474 of Program Policy Analysis and Government Accountability, and
475 the substantive or fiscal committees of the Legislature to which
476 legislation affecting the Babcock Ranch Preserve may be referred
477 shall have the authority to require and receive from the
478 corporation or from the independent auditor any records relative
479 to the operation of the corporation.
480 (c) Not later than January 15 of each year, Babcock Ranch,
481 Inc., shall submit to the Board of Trustees of the Internal
482 Improvement Trust Fund, the President of the Senate, the Speaker
483 of the House of Representatives, the department, and the
484 commission a comprehensive and detailed report of its
485 operations, activities, and accomplishments for the prior year,
486 including information on the status of the ecological, cultural,
487 and financial resources being managed by the corporation and the
488 benefits provided by the preserve to local communities. The
489 report shall also include a section describing the corporation's
490 goals for the current year.
491 (d) The board of directors shall prepare an annual budget
492 with the goal of achieving a financially self-sustaining
493 operation within 15 full fiscal years after the initial
494 acquisition of the Babcock Crescent B Ranch by the state. The
495 department shall provide necessary assistance, including details
496 as necessary, to the corporation for the timely formulation and

497 submission of an annual legislative budget request for
498 appropriations, if any, to support the administration,
499 operation, and maintenance of the preserve. A request for
500 appropriations, if necessary, shall be submitted to the
501 department and shall be included in the department's annual
502 legislative budget request as a separate line item
503 appropriation. Requests for appropriations shall be submitted to
504 the department in time to allow the department to meet the
505 requirements of s. 216.023. The department may not deny a
506 request or refuse to include in its annual legislative budget
507 submission a request from the corporation for an appropriation.
508 (e) Notwithstanding any other provision of law, all moneys
509 received from donations or from management of the preserve shall
510 be retained by the corporation in the operating fund and shall
511 be available, without further appropriation, for the
512 administration, preservation, restoration, operation and
513 maintenance, improvements, repairs, and related expenses
514 incurred with respect to properties being managed by the
515 corporation. Except as provided in this section, moneys received
516 by the corporation for the management of the preserve shall not
517 be subject to distribution by the state. Upon assuming
518 management responsibilities for the preserve, the corporation
519 shall optimize the generation of income based on existing
520 marketing conditions to the extent that activities do not
521 unreasonably diminish the long-term environmental, agricultural,
522 scenic, and natural values of the preserve or the multiple-use
523 and sustained-yield capability of the land.

524 (f) All parties in contract with the corporation and all
525 holders of leases from the corporation that are authorized to
526 occupy, use, or develop properties under the management
527 jurisdiction of the corporation must procure the proper
528 insurance as is reasonable or customary to insure against any
529 loss in connection with the properties or with activities
530 authorized in the leases or contracts.
531 (11) COMPREHENSIVE BUSINESS PLAN.--
532 (a) A comprehensive business plan for the management and
533 operation of the preserve as a working ranch and amendments to
534 the business plan may be developed with input from the
535 department and the commission and may be implemented by Babcock
536 Ranch, Inc. Any amendment to the business plan regarding the
537 agricultural operations of the ranch shall not be effective
538 until approved by the commissioner.
539 (b) Any final decision of Babcock Ranch, Inc., to adopt or
540 amend the comprehensive business plan or to approve any activity
541 related to the management of the renewable surface resources of
542 the preserve shall be made in sessions that are open to the
543 public. The board of directors shall establish procedures for
544 providing adequate public information and opportunities for
545 public comment on the proposed comprehensive business plan for
546 the preserve or for amendments to the comprehensive business
547 plan adopted by the members.
548 (c) Not less than 2 years prior to the corporation's
549 assuming management and operation responsibilities for the
550 preserve, the corporation, with input from the commission and
551 the department, must begin developing the comprehensive business

552 plan to carry out the purposes of this section. To the extent
553 consistent with these purposes, the comprehensive business plan
554 shall provide for:
555 1. The management and operation of the preserve as a
556 working ranch.
557 2. The protection and conservation of the environmental,
558 agricultural, scientific, scenic, geologic, watershed, fish,
559 wildlife, historic, cultural, and recreational values of the
560 preserve.
561 3. The promotion of controlled high-quality hunting
562 experiences for the public, with emphasis on deer, turkey, and
563 other game species.
564 4. Multiple use and sustained yield of the renewable
565 surface resources within the preserve.
566 5. Public use of and controlled access to the preserve for
567 recreation.
568 6. The use of renewable resources and management
569 alternatives that, to the extent practicable, benefit local
570 communities and small businesses and enhance the coordination of
571 management objectives with those on surrounding public or
572 private lands. The use of renewable resources and management
573 alternatives should provide cost savings to the corporation
574 through the exchange of services, including, but not limited to,
575 labor and maintenance of facilities, for resources or services
576 provided to the corporation.
577 (d) On or before the date on which title to the portion of
578 the Babcock Crescent B Ranch being purchased by the state is
579 vested in the Board of Trustees of the Internal Improvement

580 Trust Fund, Babcock Ranch Management, LLC, a limited liability
581 company incorporated in the state, shall provide the commission
582 and the department with the current proprietary management plan
583 and business plan in place.
584 (12) MANAGEMENT OF PRESERVE; FEES.--
585 (a) The corporation shall assume all authority provided by
586 this section to manage and operate the preserve as a working
587 ranch upon a determination by the Board of Trustees of the
588 Internal Improvement Trust Fund that the corporation is able to
589 conduct business and that provision has been made for essential
590 services on the preserve, which, to the maximum extent
591 practicable, shall be made no later than 60 days prior to the
592 termination of the comprehensive business plan referenced in
593 paragraph (11)(a).
594 (b) Upon assuming management and operation of the
595 preserve, the corporation shall:
596 1. With input from the commission and the department,
597 manage and operate the preserve and the uses thereof, including,
598 but not limited to, the activities necessary to administer and
599 operate the preserve as a working ranch; the activities
600 necessary for the preservation and development of the land and
601 renewable surface resources of the preserve; the activities
602 necessary for interpretation of the history of the preserve on
603 behalf of the public; the activities necessary for the
604 management, public use, and occupancy of facilities and lands
605 within the preserve; and the maintenance, rehabilitation,
606 repair, and improvement of property within the preserve.

607 2. Develop programs and activities relating to the
608 management of the preserve as a working ranch.
609 3. Negotiate directly with and enter into such agreements,
610 leases, contracts, and other arrangements with any person, firm,
611 association, organization, corporation, or governmental entity,
612 including entities of federal, state, and local governments, as
613 are necessary and appropriate to carry out the purposes and
614 activities authorized by this section.
615 4. Establish procedures for entering into lease agreements
616 and other agreements for the use and occupancy of the facilities
617 of the preserve. The procedures shall ensure reasonable
618 competition and set guidelines for determining reasonable fees,
619 terms, and conditions for such agreements.
620 5. Assess reasonable fees for admission to, use of, and
621 occupancy of the preserve for operation of the preserve as a
622 working ranch. These fees are independent of fees assessed by
623 the commission for the privilege of hunting, fishing, or
624 pursuing outdoor recreational activities within the preserve and
625 shall be deposited into the operating fund established by the
626 board of directors under the authority provided in this section.
627 (13) MISCELLANEOUS PROVISIONS.--
628 (a) Except for the powers of the commissioner provided in
629 this section and the powers of the commission provided in s. 9,
630 Art. IV of the State Constitution, the preserve shall be managed
631 by Babcock Ranch, Inc.
632 (b) Officers and employees of Babcock Ranch, Inc., are
633 private employees. At the request of the board of directors, the
634 commission and the department may provide state employees for

635 the purpose of implementing this section. Any state employee
636 provided to assist the directors in implementing this section
637 for more than 30 days shall be provided on a reimbursable basis.
638 Reimbursement to the commission and the department shall be made
639 from the corporation's operating fund provided under this
640 section and not from any funds appropriated to the corporation
641 by the Legislature.
642 (14) DISSOLUTION OF BABCOCK RANCH, INCORPORATED.--
643 (a) The corporation may be dissolved only by an act of the
644 Legislature.
645 (b) Upon dissolution of the corporation, the management
646 responsibilities provided in this section shall revert to the
647 commission and the department unless otherwise provided by the
648 Legislature under the act dissolving Babcock Ranch, Inc.
649 (c) Upon dissolution of the corporation, any cash balances
650 of funds shall revert to the General Revenue fund or such other
651 state fund as may be provided under the act dissolving Babcock
652 Ranch, Inc.
653 Section 2. (1) The sum of $310 million is appropriated
654 from the Land Acquisition Trust Fund to the Department of
655 Environmental Protection for the purchase of the Babcock
656 Crescent B Ranch contingent upon the purchase or management
657 agreement or both agreements containing or not conflicting with
658 the following provisions:
659 (a) Babcock Ranch Management, LLC, shall be the managing
660 entity of the working ranch for 5 years with an option to
661 continue for an additional 5 years.

662 (b) Babcock Ranch, Inc., shall take over the management of
663 the working ranch after the Babcock Ranch Management, LLC,
664 ceases to be the ranch manager.
665 (c) Babcock Ranch, Inc., shall adopt a management plan
666 consistent with current ranch management practices when Babcock
667 Ranch, Inc., takes over management of the working ranch.
668 (d) The Commissioner of Agriculture shall have authority
669 to approve or reject any proposed changes to the management plan
670 relating to the agricultural operations on the working ranch.
671 (e) The working ranch shall continue to be operated in a
672 financially self-sustaining manner.
673 (f) The following ranch operations shall not be prohibited
674 or restricted except by general law:
675 1. Silvicultural operations, regardless of species and
676 location.
677 2. Tenant farming.
678 3. Hunting leases.
679 4. Any other bona fide agricultural use.
680 (2) The funds appropriated in subsection (1) shall be
681 distributed to the seller in accordance with the terms of the
682 purchase agreement but no sooner than the following dates:
683 (a) The sum of $162,500,000 on or after July 1, 2006.
684 (b) The sum of $62,500,000 on or after July 1, 2007.
685 (c) The sum of $62,500,000 on or after July 1, 2008.
686 (d) The sum of $22,500,000 on or after July 1, 2009.
687 Section 3. This act shall take effect upon becoming a law.

HB 1359 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 CS Hazard Mitigation for Coastal Redevelopment
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	6 Y, 0 N, w/CS	Kliner	Kliner
2) Transportation & Economic Development Appropriations Committee	12 Y, 0 N	McAuliffe	Gordon
3) State Resources Council		Kliner	Hamby
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available. Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include the payment of money, and contribution of land and construction of hurricane shelters and transportation facilities. For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area. Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008. The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

The bill will not have a significant impact on state government or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill directs local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

The bill authorizes the Department of Health to contact the DEP prior to permitting work that may be performed on on-site sewage systems seaward of the Coastal Construction Control Line.

Safeguard individual liberty. The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dune Armoring

Along with regulating construction along Florida's coastline, the DEP manages beach restoration projects to restore eroded shoreline in coordination with the federal and local governments. Subsequent maintenance of restored shorelines, referred to as nourishment, is also administered by the DEP.

Local governments are key players in beach management. All beach front communities are responsible for assuring compliance with zoning and building codes. Some play active roles in obtaining and maintaining beach access points, trash pickup and cleanup programs, dune vegetation regulation or maintenance, and water safety. Almost all counties, a number of cities, and several special districts now are involved in planning, implementing or maintaining a beach management activity such as inlet sand by-passing, beach restoration or dune restoration. The local government sponsor is responsible for planning the project, submitting information necessary to determine the priority of the proposal, obtaining necessary permits, bidding and contracting the work, and conducting subsequent monitoring.[1]

Federal agencies are involved in the regulation of beach activities through United States Army Corps of Engineers permits required for activities conducted seaward of mean high water, and through consultation required under the National Environmental Policy Act, the Endangered Species Act, the Marine Mammals Protection Act, and others. Typically, close coordination will take place with the National Marine Fisheries Service, the United States Fish and Wildlife Service, and the Environmental Protection Agency. Primary issues include provisions to protect sea turtles and shore birds, beach mice in those areas where they are still located, and Essential Fish Habitat.[2]

The purpose of the Coastal Construction Control Line Program (CCCL) is to protect Florida's beaches and dunes while assuring reasonable use of private property. The Legislature initiated the CCCL

[1] Department of Environmental Protection Report for the Governor's Coastal High Hazard Study Committee on Chapter 161, Florida Statutes -- December, 2005, page 3.
[2] Ibid.

Program to protect the coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Once destabilized, the valuable natural resources are lost, as are its important values for recreation, upland property protection, and environmental habitat. Adoption of a coastal construction control line establishes an area of jurisdiction in which special site and design criteria are applied for construction and related activities. These standards may be more stringent than those already applied in the rest of the coastal building zone because of the greater forces expected to occur in the more seaward zone of the beach during a storm event.

Under emergency conditions, local governments may authorize temporary armoring to immediately protect public and private infrastructure like homes, utilities and roads if those structures are threatened. In order to consider the armoring permanent, the property owner must submit a complete (CCCL) permit application to the DEP within 60 days of installing the armoring. Otherwise, the property owner must remove the temporary armoring structure.

The DEP permits the installation of "dune stabilization or restoration structures" and "beach stabilization or regeneration structures" only in limited circumstances and as temporary systems in order to evaluate (1) the structure's effectiveness, (2) the structure's effect on adjacent properties, and (3) the structure's environmental impact on the beach and dune system. If erosion occurs as a result of a storm event which threatens private structures or public infrastructure, the DEP, a municipality, or another political subdivision may install or have installed rigid coastal armoring structures so long as the following measures are considered with the emergency armoring:

- Protection of the beach-dune system.
- Siting and design criteria for the protective structure
- Impacts on adjacent structures
- Preservation of public beach access
- Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

Onsite Sewage Treatment and Disposal Systems

According to the Florida Department of Health, 31 percent of the population is served by estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment. [3]

Onsite sewage treatment and disposal systems are facilities constructed on individual sites used to provide wastewater disposal. Such systems usually consist of a septic tank and a subsurface infiltration system. Within the septic tank, sedimentation and some anaerobic digestion of solids occur. Septic tanks contain bacteria that grow best in oxygen-poor conditions. These bacteria carry out a portion of the treatment process by converting most solids into liquids and gases. Bacteria that require oxygen thrive in the drainfield and complete the treatment process begun in the septic tank. If the septic tank is working well, the remaining partially treated wastewater, referred to as septic tank effluent, which flows out of the tank may be relatively clear, although it still has an odor and may carry disease organisms. [4]

Section 381.0065, F.S., states it is the intent of the Legislature that where a publicly owned or Investor owned sewerage system is not available, the Department of Health (DOH) shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems. The section requires that a person may not perform any of these actions without first obtaining a permit from the department. In issuing onsite system (septic tank) permits, the DOH has no statute or rule that specifically addresses designated coastal high hazard areas or DEP-established coastal construction control lines (CCCL), both of which are established to protect Florida's coastal system and coastal infrastructure and private property. Section 381.0065(4), F.S., states that DOH "shall not make the issuance of such [septic tank] permits contingent upon prior approval" by DEP. Because DOH has no authority to enforce DEP's statutes or rules about location of facilities in the

[3] http://www.doh.state.fl.us/environment/ostds/intro.htm
[4] http://www.doh.state.fl.us/environment/OSTDS/pdfiles/forms/brochure.pdf

coastal zone and has no authority of its own in this regard, onsite systems are often permitted seaward of structures, where they are most vulnerable to damage from storm surges.

Coastal High Hazard Study Committee
On September 7, 2005, the Governor issued Executive Order 05-178, appointing members to the Coastal High Hazard Study Committee, which was charged with studying and formulating recommendations for managing growth in Coastal High Hazard Areas, defined as the Category 1 hurricane evacuation zones. The Committee was appointed to evaluate and make recommendations to resolve problems exposed by the extraordinary hurricane seasons in 2004 and 2005.

Regional Hurricane Evacuation Studies
Section 252.35, F.S., assigns responsibility to the Division of Emergency Management (DEM) to maintain a comprehensive statewide program of emergency management. The division is required to prepare a comprehensive emergency management plan that is operations oriented. The plan must include specific regional and interregional planning provisions and promote intergovernmental coordination of evacuation activities. The division has the capability to conduct regional hurricane evacuation studies. Such studies include a computerized model run by the National Hurricane Center to estimate storm surge depths and winds resulting from historical, hypothetical, or predicted hurricanes taking into account:

- Pressure
- Size
- Forward speed
- Track
- Winds

This model is known as SLOSH (Sea, Lake, and Overland Surges from Hurricanes). Calculations are applied to a specific locale's shoreline, incorporating the unique bay and river configurations, water depths, bridges, roads, and other physical features to estimate storm surge.[5]

Another model utilized by the Division is The Arbiter of Storms model or TAOS. The TAOS model is an integrated hazards model that provides data at a higher resolution than the SLOSH model does for surge. According to DEM, the TAOS model enhances the local government's ability to do effective hazard mitigation planning. Currently, SLOSH model storm surge calculations are not available at the same resolution statewide, or in a standard Geographical Information System (GIS) format. The TAOS model can perform calculations of storm hazard risk for the entire state at one time, and the results are available for addition to the GIS data base.

The SLOSH model calculates storm surge for an area of coastline called a basin. In order to provide complete coverage for the state's coastline, 11 separate SLOSH basins and models must be created and run. Unlike the SLOSH model which only calculates for storm surge, the TAOS model will also calculate an estimate of storm surge, wave height, maximum winds, inland flooding, debris and structural damage for the entire state at once. Furthermore, the model resolution for TAOS with respect to underwater and on-land data is much finer than for the SLOSH model. No computer model is perfectly accurate and calculations of storm surge from both TAOS and SLOSH contain some degree of uncertainty.[6]

Periodic hurricane evacuation studies are required because of changing population dynamics. Populations and the existing transportation network define the speed with which an evacuation may be conducted. Regional hurricane evacuation studies are able to determine recommended timing intervals used to control a sequenced evacuation by locality.

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[5] http://www.nhc.noaa.gov/HAW2/english/surge/slosh_printer.shtml and http://www.floridadisaster.org/hurricane_aware/english/surge/x_slosh.htm
[6] http://www.floridadisaster.org/brm/lms/faq_taosslosh.htm

Effects of Proposed Changes

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service may be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

C. SECTION DIRECTORY:

Section 1. Amends subsection (3) of s. 161.085, F.S., providing that unless authority has been revoked by the DEP, an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of a rigid coastal armoring structure. The DEP may revoke such authority if the DEP determines that the structure harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings.

Sections 2 and 3. Amends paragraphs (d) and (h) of subsection (2) of section 163.3178, F.S. and adds subsection (9) to that section, to:

- Define Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

- Provide a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

- Limit mitigation so that such may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development. Mitigation must include:
    - Payment of money
    - Contribution of land and construction of hurricane shelters and transportation facilities

- Provide that for those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

- Place a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

- Require local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

- Direct the Division of Emergency Management to manage the update of regional hurricane evacuation studies. Such studies must be done in a consistent manner and using the methodology for modeling storm surge that is used by the National Hurricane Center.

Section 4. Amends subsection (4) of section 381.0065, F.S., to require the Department of Health to be in receipt of a coastal construction control line permit issued by the Department of Environmental Protection before issuing a permit for work on an onsite sewage treatment and disposal system seaward of the coastal construction control line.

Section 5. The bill provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

Dune armoring: According to the DEP, the fiscal impact is indeterminate yet probably neutral overall. The legislation would save DEP staff resources and money expended on fixing the damage caused by improperly installed emergency armoring. Such armoring increases beach erosion and damages the beach and dune system, increasing the cost of restoration and recovery projects. The cost savings is impossible to estimate with any accuracy as the costs of beach recovery and restoration projects vary greatly depending on site-specific circumstances.

The DOH reports no fiscal impact to the agency.

Hurricane studies: The Division of Emergency Management currently conducts the type of studies required by this bill. Such studies are usually funded through federal sources and recurring state funding is not usually provided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the DEP, there would be no fiscal impact on local governments that properly use their authority to install or authorize emergency armoring.

Certain local governments may spend an indeterminate amount of time and resources to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008. According to the Association of Counties, the expense is not considered to be substantial.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Improved assurance of proper coastal armoring will save private property by preventing coastal erosion, likely saving insurance as well as property repair and replacement costs. These savings could be substantial but are indeterminate.

Indeterminate savings could accrue to homeowners whose onsite sewage systems are not washed away during storms because better consideration is given to proper siting.

If an amendment to a local government comprehensive plan raises the population density within a coastal high hazard area, developers will need to provide mitigation options for on-site sheltering or transportation out of harms way.

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Committee on Environmental Regulation approved a strike all amendment offered by the bill sponsor. The strike all differs from the bill as originally filed as follows.

The amendment defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The amendment requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The amendment provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The amendment places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

The amendment removes the provision in the original bill that required a real estate agent to disclosure that the property considered for purchase lies within a hurricane evacuation zone.

CHAMBER ACTION

1 The Environmental Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to hazard mitigation for coastal
7 redevelopment; amending s. 161.085, F.S.; specifying
8 entities that are authorized to install or authorize
9 installation of rigid coastal armoring structures;
10 authorizing the Department of Environmental Protection to
11 revoke certain authority; amending s. 163.3178, F.S.;
12 defining the term "coastal high-hazard areas"; providing
13 criteria for mitigation for certain comprehensive plan
14 amendments; authorizing local governments to amend
15 comprehensive plans to increase residential densities for
16 certain properties; providing standards for certain
17 comprehensive plan compliance; requiring local governments
18 to adopt a certain level of service for out-of-county
19 hurricane evacuation under certain circumstances;
20 prohibiting new development of certain facilities in
21 certain areas; providing a deadline for local governments
22 to amend future land use maps; amending s. 163.3178, F.S.;
23 requiring the Division of Emergency Management to manage

24 certain hurricane evacuation studies; requiring that such
25 studies be performed in a specified manner; amending s.
26 381.0065, F.S.; requiring the issuance of certain permits
27 by the Department of Health to be contingent upon the
28 receipt of certain permits issued by the Department of
29 Environmental Protection; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Subsection (3) of section 161.085, Florida
34 Statutes, is amended, and subsection (8) is added to that
35 section, to read:
36 161.085 Rigid coastal armoring structures.--
37 (3) If erosion occurs as a result of a storm event which
38 threatens private structures or public infrastructure and a
39 permit has not been issued pursuant to subsection (2), unless
40 the authority has been revoked by order of the department
41 pursuant to subsection (8), an ~~the~~ agency, political
42 subdivision, or municipality having jurisdiction over the
43 impacted area may install or authorize installation of rigid
44 coastal armoring structures for the protection of private
45 structures or public infrastructure, or take other measures to
46 relieve the threat to private structures or public
47 infrastructure as long as the following items are considered and
48 incorporated into such emergency measures:
49 (a) Protection of the beach-dune system.
50 (b) Siting and design criteria for the protective
51 structure.

52 (c) Impacts on adjacent properties.
53 (d) Preservation of public beach access.
54 (e) Protection of native coastal vegetation and nesting
55 marine turtles and their hatchlings.
56 (8) If an agency, political subdivision, or municipality
57 installs or authorizes installation of a rigid coastal armoring
58 structure that does not comply with subsection (3), and if the
59 department determines that the action harms or interferes with
60 the protection of the beach-dune system, adversely impacts
61 adjacent properties, interferes with public beach access, or
62 harms native coastal vegetation or nesting marine turtles or
63 their hatchlings, the department may revoke by order the
64 authority of the agency, political subdivision, or municipality
65 under subsection (3) to install or authorize the installation of
66 rigid coastal armoring structures.
67 Section 2. Paragraph (h) of subsection (2) of section
68 163.3178, Florida Statutes, is amended, and subsection (9) is
69 added to that section, to read:
70 163.3178 Coastal management.--
71 (2) Each coastal management element required by s.
72 163.3177(6)(g) shall be based on studies, surveys, and data; be
73 consistent with coastal resource plans prepared and adopted
74 pursuant to general or special law; and contain:
75 (h) Designation of coastal high-hazard ~~coastal~~ areas and
76 the criteria for mitigation for a comprehensive plan amendment
77 in a coastal high-hazard area~~, which for uniformity and planning~~
78 ~~purposes herein, are defined as category 1 evacuation zones~~. The
79 coastal high-hazard area is the area below the elevation of the

80 Category 1 storm surge line as established by a Sea, Lake and
81 Overland Surges from Hurricanes (SLOSH) computerized storm surge
82 model. The application for development ~~However, application of~~
83 ~~mitigation~~ and redevelopment policies, pursuant to s. 380.27(2),
84 and any rules adopted thereunder, shall be at the discretion of
85 local government.
86 (9)(a) A proposed comprehensive plan amendment shall be
87 found in compliance with state coastal high-hazard standards
88 pursuant to rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7),
89 Florida Administrative Code, if:
90 1. The adopted level of service for out-of-county
91 hurricane evacuation is maintained; or
92 2. A 12-hour evacuation time to shelter is maintained and
93 shelter space reasonably expected to accommodate the residents
94 of the development contemplated by a proposed comprehensive plan
95 amendment is available; or
96 3. Appropriate mitigation to satisfy the provisions of
97 subparagraph 1. or subparagraph 2. is provided. Appropriate
98 mitigation shall include, but not be limited to, payment of
99 money, contribution of land, and construction of hurricane
100 shelters and transportation facilities. Required mitigation
101 shall not exceed the amount required for a developer to
102 accommodate impacts reasonably attributable to its development.
103 (b) For those local governments that have not established
104 a level of service for out-of-county hurricane evacuation by
105 July 1, 2008, the level of service shall be no greater than 16
106 hours.

107 (c) No new adult congregate living facilities, community
108 residential homes, group homes, homes for the aged, hospitals,
109 or nursing homes shall be located within the coastal high-hazard
110 area.
111 (d) This subsection shall become effective immediately and
112 shall apply to all local governments. No later than July 1,
113 2008, local governments shall amend their future land use map
114 and coastal management element to include the new definition of
115 coastal high-hazard area, the coastal high-hazard map, and the
116 appropriate mitigation strategies.
117 Section 3. Paragraph (d) of subsection (2) of section
118 163.3178, Florida Statutes, is amended to read:
119 163.3178 Coastal management.--
120 (2) Each coastal management element required by s.
121 163.3177(6)(g) shall be based on studies, surveys, and data; be
122 consistent with coastal resource plans prepared and adopted
123 pursuant to general or special law; and contain:
124 (d) A component which outlines principles for hazard
125 mitigation and protection of human life against the effects of
126 natural disaster, including population evacuation, which take
127 into consideration the capability to safely evacuate the density
128 of coastal population proposed in the future land use plan
129 element in the event of an impending natural disaster. The
130 Division of Emergency Management shall manage the update of the
131 regional hurricane evacuation studies, ensure such studies are
132 done in a consistent manner, and ensure that the methodology
133 used for modeling storm surge is that used by the National
134 Hurricane Center.

135 Section 4. Subsection (4) of section 381.0065, Florida
136 Statutes, is amended to read:
137 381.0065 Onsite sewage treatment and disposal systems;
138 regulation.--
139 (4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may
140 not construct, repair, modify, abandon, or operate an onsite
141 sewage treatment and disposal system without first obtaining a
142 permit approved by the department. The department may issue
143 permits to carry out this section, but shall not make the
144 issuance of such permits contingent upon prior approval by the
145 Department of Environmental Protection, except that the issuance
146 of a permit for work seaward of the coastal construction control
147 line established under s. 161.053 shall be contingent upon
148 receipt of any required coastal construction control line permit
149 from the Department of Environmental Protection. A construction
150 permit is valid for 18 months from the issuance date and may be
151 extended by the department for one 90-day period under rules
152 adopted by the department. A repair permit is valid for 90 days
153 from the date of issuance. An operating permit must be obtained
154 prior to the use of any aerobic treatment unit or if the
155 establishment generates commercial waste. Buildings or
156 establishments that use an aerobic treatment unit or generate
157 commercial waste shall be inspected by the department at least
158 annually to assure compliance with the terms of the operating
159 permit. The operating permit for a commercial wastewater system
160 is valid for 1 year from the date of issuance and must be
161 renewed annually. The operating permit for an aerobic treatment
162 unit is valid for 2 years from the date of issuance and must be

163 renewed every 2 years. If all information pertaining to the
164 siting, location, and installation conditions or repair of an
165 onsite sewage treatment and disposal system remains the same, a
166 construction or repair permit for the onsite sewage treatment
167 and disposal system may be transferred to another person, if the
168 transferee files, within 60 days after the transfer of
169 ownership, an amended application providing all corrected
170 information and proof of ownership of the property. There is no
171 fee associated with the processing of this supplemental
172 information. A person may not contract to construct, modify,
173 alter, repair, service, abandon, or maintain any portion of an
174 onsite sewage treatment and disposal system without being
175 registered under part III of chapter 489. A property owner who
176 personally performs construction, maintenance, or repairs to a
177 system serving his or her own owner-occupied single-family
178 residence is exempt from registration requirements for
179 performing such construction, maintenance, or repairs on that
180 residence, but is subject to all permitting requirements. A
181 municipality or political subdivision of the state may not issue
182 a building or plumbing permit for any building that requires the
183 use of an onsite sewage treatment and disposal system unless the
184 owner or builder has received a construction permit for such
185 system from the department. A building or structure may not be
186 occupied and a municipality, political subdivision, or any state
187 or federal agency may not authorize occupancy until the
188 department approves the final installation of the onsite sewage
189 treatment and disposal system. A municipality or political
190 subdivision of the state may not approve any change in occupancy

191 or tenancy of a building that uses an onsite sewage treatment
192 and disposal system until the department has reviewed the use of
193 the system with the proposed change, approved the change, and
194 amended the operating permit.
195 (a) Subdivisions and lots in which each lot has a minimum
196 area of at least one-half acre and either a minimum dimension of
197 100 feet or a mean of at least 100 feet of the side bordering
198 the street and the distance formed by a line parallel to the
199 side bordering the street drawn between the two most distant
200 points of the remainder of the lot may be developed with a water
201 system regulated under s. 381.0062 and onsite sewage treatment
202 and disposal systems, provided the projected daily sewage flow
203 does not exceed an average of 1,500 gallons per acre per day,
204 and provided satisfactory drinking water can be obtained and all
205 distance and setback, soil condition, water table elevation, and
206 other related requirements of this section and rules adopted
207 under this section can be met.
208 (b) Subdivisions and lots using a public water system as
209 defined in s. 403.852 may use onsite sewage treatment and
210 disposal systems, provided there are no more than four lots per
211 acre, provided the projected daily sewage flow does not exceed
212 an average of 2,500 gallons per acre per day, and provided that
213 all distance and setback, soil condition, water table elevation,
214 and other related requirements that are generally applicable to
215 the use of onsite sewage treatment and disposal systems are met.
216 (c) Notwithstanding the provisions of paragraphs (a) and
217 (b), for subdivisions platted of record on or before October 1,
218 1991, when a developer or other appropriate entity has

219 previously made or makes provisions, including financial
220 assurances or other commitments, acceptable to the Department of
221 Health, that a central water system will be installed by a
222 regulated public utility based on a density formula, private
223 potable wells may be used with onsite sewage treatment and
224 disposal systems until the agreed-upon densities are reached.
225 The department may consider assurances filed with the Department
226 of Business and Professional Regulation under chapter 498 in
227 determining the adequacy of the financial assurance required by
228 this paragraph. In a subdivision regulated by this paragraph,
229 the average daily sewage flow may not exceed 2,500 gallons per
230 acre per day. This section does not affect the validity of
231 existing prior agreements. After October 1, 1991, the exception
232 provided under this paragraph is not available to a developer or
233 other appropriate entity.
234 (d) Paragraphs (a) and (b) do not apply to any proposed
235 residential subdivision with more than 50 lots or to any
236 proposed commercial subdivision with more than 5 lots where a
237 publicly owned or investor-owned sewerage system is available.
238 It is the intent of this paragraph not to allow development of
239 additional proposed subdivisions in order to evade the
240 requirements of this paragraph.
241 (e) Onsite sewage treatment and disposal systems must not
242 be placed closer than:
243 1. Seventy-five feet from a private potable well.
244 2. Two hundred feet from a public potable well serving a
245 residential or nonresidential establishment having a total
246 sewage flow of greater than 2,000 gallons per day.

247 3. One hundred feet from a public potable well serving a
248 residential or nonresidential establishment having a total
249 sewage flow of less than or equal to 2,000 gallons per day.
250 4. Fifty feet from any nonpotable well.
251 5. Ten feet from any storm sewer pipe, to the maximum
252 extent possible, but in no instance shall the setback be less
253 than 5 feet.
254 6. Seventy-five feet from the mean high-water line of a
255 tidally influenced surface water body.
256 7. Seventy-five feet from the mean annual flood line of a
257 permanent nontidal surface water body.
258 8. Fifteen feet from the design high-water line of
259 retention areas, detention areas, or swales designed to contain
260 standing or flowing water for less than 72 hours after a
261 rainfall or the design high-water level of normally dry drainage
262 ditches or normally dry individual lot stormwater retention
263 areas.
264 (f) Except as provided under paragraphs (e) and (t), no
265 limitations shall be imposed by rule, relating to the distance
266 between an onsite disposal system and any area that either
267 permanently or temporarily has visible surface water.
268 (g) All provisions of this section and rules adopted under
269 this section relating to soil condition, water table elevation,
270 distance, and other setback requirements must be equally applied
271 to all lots, with the following exceptions:
272 1. Any residential lot that was platted and recorded on or
273 after January 1, 1972, or that is part of a residential
274 subdivision that was approved by the appropriate permitting

275 agency on or after January 1, 1972, and that was eligible for an
276 onsite sewage treatment and disposal system construction permit
277 on the date of such platting and recording or approval shall be
278 eligible for an onsite sewage treatment and disposal system
279 construction permit, regardless of when the application for a
280 permit is made. If rules in effect at the time the permit
281 application is filed cannot be met, residential lots platted and
282 recorded or approved on or after January 1, 1972, shall, to the
283 maximum extent possible, comply with the rules in effect at the
284 time the permit application is filed. At a minimum, however,
285 those residential lots platted and recorded or approved on or
286 after January 1, 1972, but before January 1, 1983, shall comply
287 with those rules in effect on January 1, 1983, and those
288 residential lots platted and recorded or approved on or after
289 January 1, 1983, shall comply with those rules in effect at the
290 time of such platting and recording or approval. In determining
291 the maximum extent of compliance with current rules that is
292 possible, the department shall allow structures and
293 appurtenances thereto which were authorized at the time such
294 lots were platted and recorded or approved.
295 2. Lots platted before 1972 are subject to a 50-foot
296 minimum surface water setback and are not subject to lot size
297 requirements. The projected daily flow for onsite sewage
298 treatment and disposal systems for lots platted before 1972 may
299 not exceed:
300 a. Two thousand five hundred gallons per acre per day for
301 lots served by public water systems as defined in s. 403.852.

302 b. One thousand five hundred gallons per acre per day for
303 lots served by water systems regulated under s. 381.0062.
304 (h)1. The department may grant variances in hardship cases
305 which may be less restrictive than the provisions specified in
306 this section. If a variance is granted and the onsite sewage
307 treatment and disposal system construction permit has been
308 issued, the variance may be transferred with the system
309 construction permit, if the transferee files, within 60 days
310 after the transfer of ownership, an amended construction permit
311 application providing all corrected information and proof of
312 ownership of the property and if the same variance would have
313 been required for the new owner of the property as was
314 originally granted to the original applicant for the variance.
315 There is no fee associated with the processing of this
316 supplemental information. A variance may not be granted under
317 this section until the department is satisfied that:
318 a. The hardship was not caused intentionally by the action
319 of the applicant;
320 b. No reasonable alternative, taking into consideration
321 factors such as cost, exists for the treatment of the sewage;
322 and
323 c. The discharge from the onsite sewage treatment and
324 disposal system will not adversely affect the health of the
325 applicant or the public or significantly degrade the groundwater
326 or surface waters.
327
328 Where soil conditions, water table elevation, and setback
329 provisions are determined by the department to be satisfactory,

330 special consideration must be given to those lots platted before
331 1972.
332 2. The department shall appoint and staff a variance
333 review and advisory committee, which shall meet monthly to
334 recommend agency action on variance requests. The committee
335 shall make its recommendations on variance requests at the
336 meeting in which the application is scheduled for consideration,
337 except for an extraordinary change in circumstances, the receipt
338 of new information that raises new issues, or when the applicant
339 requests an extension. The committee shall consider the criteria
340 in subparagraph 1. in its recommended agency action on variance
341 requests and shall also strive to allow property owners the full
342 use of their land where possible. The committee consists of the
343 following:
344 a. The Division Director for Environmental Health of the
345 department or his or her designee.
346 b. A representative from the county health departments.
347 c. A representative from the home building industry
348 recommended by the Florida Home Builders Association.
349 d. A representative from the septic tank industry
350 recommended by the Florida Onsite Wastewater Association.
351 e. A representative from the Department of Environmental
352 Protection.
353 f. A representative from the real estate industry who is
354 also a developer in this state who develops lots using onsite
355 sewage treatment and disposal systems, recommended by the
356 Florida Association of Realtors.

357 g. A representative from the engineering profession
358 recommended by the Florida Engineering Society.
359
360 Members shall be appointed for a term of 3 years, with such
361 appointments being staggered so that the terms of no more than
362 two members expire in any one year. Members shall serve without
363 remuneration, but if requested, shall be reimbursed for per diem
364 and travel expenses as provided in s. 112.061.
365 (i) A construction permit may not be issued for an onsite
366 sewage treatment and disposal system in any area zoned or used
367 for industrial or manufacturing purposes, or its equivalent,
368 where a publicly owned or investor-owned sewage treatment system
369 is available, or where a likelihood exists that the system will
370 receive toxic, hazardous, or industrial waste. An existing
371 onsite sewage treatment and disposal system may be repaired if a
372 publicly owned or investor-owned sewerage system is not
373 available within 500 feet of the building sewer stub-out and if
374 system construction and operation standards can be met. This
375 paragraph does not require publicly owned or investor-owned
376 sewerage treatment systems to accept anything other than
377 domestic wastewater.
378 1. A building located in an area zoned or used for
379 industrial or manufacturing purposes, or its equivalent, when
380 such building is served by an onsite sewage treatment and
381 disposal system, must not be occupied until the owner or tenant
382 has obtained written approval from the department. The
383 department shall not grant approval when the proposed use of the

384 system is to dispose of toxic, hazardous, or industrial
385 wastewater or toxic or hazardous chemicals.
386 2. Each person who owns or operates a business or facility
387 in an area zoned or used for industrial or manufacturing
388 purposes, or its equivalent, or who owns or operates a business
389 that has the potential to generate toxic, hazardous, or
390 industrial wastewater or toxic or hazardous chemicals, and uses
391 an onsite sewage treatment and disposal system that is installed
392 on or after July 5, 1989, must obtain an annual system operating
393 permit from the department. A person who owns or operates a
394 business that uses an onsite sewage treatment and disposal
395 system that was installed and approved before July 5, 1989, need
396 not obtain a system operating permit. However, upon change of
397 ownership or tenancy, the new owner or operator must notify the
398 department of the change, and the new owner or operator must
399 obtain an annual system operating permit, regardless of the date
400 that the system was installed or approved.
401 3. The department shall periodically review and evaluate
402 the continued use of onsite sewage treatment and disposal
403 systems in areas zoned or used for industrial or manufacturing
404 purposes, or its equivalent, and may require the collection and
405 analyses of samples from within and around such systems. If the
406 department finds that toxic or hazardous chemicals or toxic,
407 hazardous, or industrial wastewater have been or are being
408 disposed of through an onsite sewage treatment and disposal
409 system, the department shall initiate enforcement actions
410 against the owner or tenant to ensure adequate cleanup,
411 treatment, and disposal.

412 (j) An onsite sewage treatment and disposal system for a
413 single-family residence that is designed by a professional
414 engineer registered in the state and certified by such engineer
415 as complying with performance criteria adopted by the department
416 must be approved by the department subject to the following:
417 1. The performance criteria applicable to engineer-
418 designed systems must be limited to those necessary to ensure
419 that such systems do not adversely affect the public health or
420 significantly degrade the groundwater or surface water. Such
421 performance criteria shall include consideration of the quality
422 of system effluent, the proposed total sewage flow per acre,
423 wastewater treatment capabilities of the natural or replaced
424 soil, water quality classification of the potential surface-
425 water-receiving body, and the structural and maintenance
426 viability of the system for the treatment of domestic
427 wastewater. However, performance criteria shall address only the
428 performance of a system and not a system's design.
429 2. The technical review and advisory panel shall assist
430 the department in the development of performance criteria
431 applicable to engineer-designed systems.
432 3. A person electing to utilize an engineer-designed
433 system shall, upon completion of the system design, submit such
434 design, certified by a registered professional engineer, to the
435 county health department. The county health department may
436 utilize an outside consultant to review the engineer-designed
437 system, with the actual cost of such review to be borne by the
438 applicant. Within 5 working days after receiving an engineer-
439 designed system permit application, the county health department

440 shall request additional information if the application is not
441 complete. Within 15 working days after receiving a complete
442 application for an engineer-designed system, the county health
443 department either shall issue the permit or, if it determines
444 that the system does not comply with the performance criteria,
445 shall notify the applicant of that determination and refer the
446 application to the department for a determination as to whether
447 the system should be approved, disapproved, or approved with
448 modification. The department engineer's determination shall
449 prevail over the action of the county health department. The
450 applicant shall be notified in writing of the department's
451 determination and of the applicant's rights to pursue a variance
452 or seek review under the provisions of chapter 120.
453 4. The owner of an engineer-designed performance-based
454 system must maintain a current maintenance service agreement
455 with a maintenance entity permitted by the department. The
456 maintenance entity shall obtain a biennial system operating
457 permit from the department for each system under service
458 contract. The department shall inspect the system at least
459 annually, or on such periodic basis as the fee collected
460 permits, and may collect system-effluent samples if appropriate
461 to determine compliance with the performance criteria. The fee
462 for the biennial operating permit shall be collected beginning
463 with the second year of system operation. The maintenance entity
464 shall inspect each system at least twice each year and shall
465 report quarterly to the department on the number of systems
466 inspected and serviced.

467 5. If an engineer-designed system fails to properly
468 function or fails to meet performance standards, the system
469 shall be re-engineered, if necessary, to bring the system into
470 compliance with the provisions of this section.
471 (k) An innovative system may be approved in conjunction
472 with an engineer-designed site-specific system which is
473 certified by the engineer to meet the performance-based criteria
474 adopted by the department.
475 (l) For the Florida Keys, the department shall adopt a
476 special rule for the construction, installation, modification,
477 operation, repair, maintenance, and performance of onsite sewage
478 treatment and disposal systems which considers the unique soil
479 conditions and which considers water table elevations,
480 densities, and setback requirements. On lots where a setback
481 distance of 75 feet from surface waters, saltmarsh, and
482 buttonwood association habitat areas cannot be met, an injection
483 well, approved and permitted by the department, may be used for
484 disposal of effluent from onsite sewage treatment and disposal
485 systems.
486 (m) No product sold in the state for use in onsite sewage
487 treatment and disposal systems may contain any substance in
488 concentrations or amounts that would interfere with or prevent
489 the successful operation of such system, or that would cause
490 discharges from such systems to violate applicable water quality
491 standards. The department shall publish criteria for products
492 known or expected to meet the conditions of this paragraph. In
493 the event a product does not meet such criteria, such product

494 may be sold if the manufacturer satisfactorily demonstrates to
495 the department that the conditions of this paragraph are met.
496 (n) Evaluations for determining the seasonal high-water
497 table elevations or the suitability of soils for the use of a
498 new onsite sewage treatment and disposal system shall be
499 performed by department personnel, professional engineers
500 registered in the state, or such other persons with expertise,
501 as defined by rule, in making such evaluations. Evaluations for
502 determining mean annual flood lines shall be performed by those
503 persons identified in paragraph (2)(i). The department shall
504 accept evaluations submitted by professional engineers and such
505 other persons as meet the expertise established by this section
506 or by rule unless the department has a reasonable scientific
507 basis for questioning the accuracy or completeness of the
508 evaluation.
509 (o) The department shall appoint a research review and
510 advisory committee, which shall meet at least semiannually. The
511 committee shall advise the department on directions for new
512 research, review and rank proposals for research contracts, and
513 review draft research reports and make comments. The committee
514 is comprised of:
515 1. A representative of the Division of Environmental
516 Health of the Department of Health.
517 2. A representative from the septic tank industry.
518 3. A representative from the home building industry.
519 4. A representative from an environmental interest group.

520 5. A representative from the State University System, from
521 a department knowledgeable about onsite sewage treatment and
522 disposal systems.
523 6. A professional engineer registered in this state who
524 has work experience in onsite sewage treatment and disposal
525 systems.
526 7. A representative from the real estate profession.
527 8. A representative from the restaurant industry.
528 9. A consumer.
529
530 Members shall be appointed for a term of 3 years, with the
531 appointments being staggered so that the terms of no more than
532 four members expire in any one year. Members shall serve without
533 remuneration, but are entitled to reimbursement for per diem and
534 travel expenses as provided in s. 112.061.
535 (p) An application for an onsite sewage treatment and
536 disposal system permit shall be completed in full, signed by the
537 owner or the owner's authorized representative, or by a
538 contractor licensed under chapter 489, and shall be accompanied
539 by all required exhibits and fees. No specific documentation of
540 property ownership shall be required as a prerequisite to the
541 review of an application or the issuance of a permit. The
542 issuance of a permit does not constitute determination by the
543 department of property ownership.
544 (q) The department may not require any form of subdivision
545 analysis of property by an owner, developer, or subdivider prior
546 to submission of an application for an onsite sewage treatment
547 and disposal system.

548 (r) Nothing in this section limits the power of a
549 municipality or county to enforce other laws for the protection
550 of the public health and safety.
551 (s) In the siting of onsite sewage treatment and disposal
552 systems, including drainfields, shoulders, and slopes, guttering
553 shall not be required on single-family residential dwelling
554 units for systems located greater than 5 feet from the roof drip
555 line of the house. If guttering is used on residential dwelling
556 units, the downspouts shall be directed away from the
557 drainfield.
558 (t) Notwithstanding the provisions of subparagraph (g)1.,
559 onsite sewage treatment and disposal systems located in
560 floodways of the Suwannee and Aucilla Rivers must adhere to the
561 following requirements:
562 1. The absorption surface of the drainfield shall not be
563 subject to flooding based on 10-year flood elevations. Provided,
564 however, for lots or parcels created by the subdivision of land
565 in accordance with applicable local government regulations prior
566 to January 17, 1990, if an applicant cannot construct a
567 drainfield system with the absorption surface of the drainfield
568 at an elevation equal to or above 10-year flood elevation, the
569 department shall issue a permit for an onsite sewage treatment
570 and disposal system within the 10-year floodplain of rivers,
571 streams, and other bodies of flowing water if all of the
572 following criteria are met:
573 a. The lot is at least one-half acre in size;
574 b. The bottom of the drainfield is at least 36 inches
575 above the 2-year flood elevation; and

576 c. The applicant installs either: a waterless,
577 incinerating, or organic waste composting toilet and a graywater
578 system and drainfield in accordance with department rules; an
579 aerobic treatment unit and drainfield in accordance with
580 department rules; a system approved by the State Health Office
581 that is capable of reducing effluent nitrate by at least 50
582 percent; or a system approved by the county health department
583 pursuant to department rule other than a system using
584 alternative drainfield materials. The United States Department
585 of Agriculture Soil Conservation Service soil maps, State of
586 Florida Water Management District data, and Federal Emergency
587 Management Agency Flood Insurance maps are resources that shall
588 be used to identify flood-prone areas.
589 2. The use of fill or mounding to elevate a drainfield
590 system out of the 10-year floodplain of rivers, streams, or
591 other bodies of flowing water shall not be permitted if such a
592 system lies within a regulatory floodway of the Suwannee and
593 Aucilla Rivers. In cases where the 10-year flood elevation does
594 not coincide with the boundaries of the regulatory floodway, the
595 regulatory floodway will be considered for the purposes of this
596 subsection to extend at a minimum to the 10-year flood
597 elevation.
598 (u) The owner of an aerobic treatment unit system shall
599 maintain a current maintenance service agreement with an aerobic
600 treatment unit maintenance entity permitted by the department.
601 The maintenance entity shall obtain a system operating permit
602 from the department for each aerobic treatment unit under
603 service contract. The maintenance entity shall inspect each

604 aerobic treatment unit system at least twice each year and shall
605 report quarterly to the department on the number of aerobic
606 treatment unit systems inspected and serviced. The owner shall
607 allow the department to inspect during reasonable hours each
608 aerobic treatment unit system at least annually, and such
609 inspection may include collection and analysis of system-
610 effluent samples for performance criteria established by rule of
611 the department.
612 (v) The department may require the submission of detailed
613 system construction plans that are prepared by a professional
614 engineer registered in this state. The department shall
615 establish by rule criteria for determining when such a
616 submission is required.
617 Section 5. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1359 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representatives Benson & Coley offered the following:
3
4 **Amendment (with title amendment)**
5 Insert between line 32 and 33:
6 Section 1. Subsection (2) of section 161.021, Florida
7 Statutes, is amended, present subsections (8), (9), and (10) of
8 that section are redesignated as subsections (10), (11), and
9 (12), respectively, and new subsections (8) and (9) are added to
10 that section, to read:
11 161.021 Definitions.--In construing these statutes, where
12 the context does not clearly indicate otherwise, the word,
13 phrase, or term:
14 (2) "Beach and shore preservation," "erosion control,
15 beach preservation and hurricane protection," "beach erosion
16 control" and "erosion control" includes, but is not limited to,
17 erosion control, hurricane protection, coastal flood control,
18 <u>dune restoration, the use of dune stabilization or restoration</u>
19 <u>structures,</u> shoreline and offshore rehabilitation, and
20 regulation of work and activities likely to affect the physical
21 condition of the beach or shore.

22 (8) "Dune restoration" means the placement of native or
23 beach-compatible sand, either alone or together with a dune
24 stabilization or restoration structure, in order to stabilize,
25 protect, or restore a dune to a natural appearance and
26 functioning condition and provide storm protection for upland
27 properties.
28 (9) "Dune stabilization or restoration structure" means a
29 sloping subsurface core covered with native or beach-compatible
30 sand and native vegetation designed to stabilize, protect, or
31 restore the dune to a natural appearance and functioning
32 condition, including a sand-filled geosynthetic container or
33 other soft protection system.
34 Section 2. Section 161.084, Florida Statutes, is created
35 to read:
36 161.084 Dune stabilization or restoration structures.--
37 (1) The department shall examine, study, and issue permits
38 for the installation of dune stabilization or restoration
39 structures as an alternative method for dealing with coastal
40 erosion and to avoid the permanent loss of dunes or beaches, the
41 scouring or erosion of adjacent property, and loss of habitat
42 for nesting marine turtles.
43 (2) The department may issue permits for the use of dune
44 stabilization or restoration structures for the purpose of
45 preventing erosion or restoring the beach-dune system following
46 critical erosion.
47 (3) If a storm event occurs which causes critical erosion
48 to the beach-dune system and a permit has not been issued
49 pursuant to subsection (2), the department, political
50 subdivision, or municipality may install or authorize the
51 installation of dune stabilization or restoration structures as

52 an emergency response measure in order to stabilize, protect, or
53 restore the beach-dune system, so long as the dune stabilization
54 or restoration structure:
55 (a) Is installed in a segment that is designated by the
56 department as critically eroded, is vulnerable to becoming
57 critically eroded due to a 25-year-interval storm, or is located
58 between critically eroded segments of the beach-dune system and
59 inclusion is necessary for design purposes or continuity of
60 management of the beach-dune system.
61 (b) Is installed in a subsurface site and covered with 3
62 feet of native or beach-compatible sand and native dune-
63 stabilizing vegetation.
64 (c) Is sited as far landward as practicable in order to
65 minimize excavation of the beach and frontal dune, impacts to
66 existing native coastal vegetation, and impacts to adjacent
67 properties that continue to provide adequate protection for the
68 dune and upland structures, if any.
69 (d) Promotes scenery that is compatible with recreation
70 and tourism.
71 (e) Provides a gently sloping angle having a seaward
72 surface that is no steeper than 3 feet horizontal to 1 foot
73 vertical.
74 (f) Does not materially impede access by the public or
75 marine life.
76 (g) Provides toe scour protection to prevent the structure
77 and the beach-dune system from being undermined by further
78 erosion.
79 (h) Is designed to facilitate easy removal if it ceases to
80 function due to irreparable damage and causes significant
81 adverse impact.

82 (i) Is designed to minimize significant adverse impact to
83 marine turtles and turtle hatchlings, consistent with s. 370.12.
84 (4) In order to encourage landowner participation in the
85 long-term stabilization, restoration, and protection of the
86 beach-dune system through a predictable and flexible permitting
87 process, the department and other permitting agencies shall
88 issue permits for subsurface dune stabilization or restoration
89 structures if the proposed activity substantially complies with
90 the requirements set forth in paragraphs (3)(a)-(i).
91 (5) A permitting agency shall notify the department if it
92 installs or authorizes the installation of any dune
93 stabilization or restoration structures within its jurisdiction.
94 The department may delegate its permitting, supervisory, and
95 regulatory authority to authorize a political subdivision or
96 municipality to permit, supervise, and regulate such dune
97 stabilization or restoration structure pursuant to s. 161.053.
98 (6) The department may require any engineering
99 certifications that are necessary in order to ensure the
100 adequacy of the design and construction of permitted projects.
101 (7) The department shall use clearly defined scientific
102 principles as the basis for including any biological or
103 environmental monitoring conditions in the permit requirements,
104 denying any permit application, or accepting any engineering
105 evidence provided by a coastal engineer.
106 (8) The department shall adopt rules to administer this
107 section.
108 Section 3. This act shall take effect upon becoming a law.
109
110 ========== T I T L E A M E N D M E N T ==========
111 Remove line 7 and insert:

112 redevelopment; amending s. 161.021, F.S.; redefining various
113 terms to include the use of dune stabilization or restoration
114 structures within activities intended to preserve and
115 rehabilitate the beach or shore; defining the terms "dune
116 restoration" and "dune stabilization or restoration structure";
117 creating s. 161.084, F.S.; requiring the Department of
118 Environmental Protection to examine and issue permits for the
119 installation of dune stabilization or restoration structures;
120 providing for the department, a political subdivision, or a
121 municipality to install a dune stabilization or restoration
122 structure without a permit following a storm event that causes
123 critical erosion; providing requirements for such installation;
124 requiring that the department be notified of such installation;
125 authorizing the department to delegate its regulatory authority
126 to a political subdivision or municipality with respect to a
127 dune stabilization or restoration structure; authorizing the
128 department to require certain engineering certifications;
129 providing standards for permitting requirements; amending s.
130 161.085, F.S.; specifying

Bill No. **HB 1359 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representatives Benson offered the following:
3
4 **Amendment (with title amendment)**
5 Between line(s) 616 and 617 and insert:
6 Section 5. Subsections (2) and (3) of section 163.336,
7 Florida Statutes, are amended to read:
8 163.336 Coastal resort area redevelopment pilot project.--
9 (2) PILOT PROJECT ADMINISTRATION.--
10 (a) To be eligible to participate in this pilot project,
11 all or a portion of the area must be within:
12 1. The coastal building zone as defined in s. 161.54; and
13 2. A community redevelopment area, enterprise zone,
14 brownfield area, empowerment zone, or other such economically
15 deprived areas as designated by the county or municipality with
16 jurisdiction over the area.
17 (b) Local governments are encouraged to use the full range
18 of economic and tax incentives available to facilitate and
19 promote redevelopment and revitalization within the pilot
20 project areas.

21 (c) The Office of the Governor, Department of
22 Environmental Protection, and the Department of Community
23 Affairs are directed to provide technical assistance to expedite
24 permitting for redevelopment projects and construction
25 activities within the pilot project areas consistent with the
26 principles, processes, and timeframes provided in s. 403.973.
27 (d) The Department of Environmental Protection shall
28 exempt construction activities within the pilot project area in
29 locations seaward of a coastal construction control line and
30 landward of existing armoring from certain siting and design
31 criteria pursuant to s. 161.053. However, such exemption shall
32 not be deemed to exempt property within the pilot project area
33 from applicable local land development regulations, including
34 but not limited to, setback, side lot line, and lot coverage
35 requirements. Such exemption shall apply to construction and
36 redevelopment of structures involving the coverage, excavation,
37 and impervious surface criteria of s. 161.053, and related
38 adopted rules, as follows:
39 1. This review by the department of applications for
40 permits for coastal construction within the pilot project area
41 must apply to construction and redevelopment of structures
42 subject to the coverage, excavation, and impervious surface
43 criteria of s. 161.053, and related adopted rules. It is the
44 intent of these provisions that the pilot project area be
45 enabled to redevelop in a manner which meets the economic needs
46 of the area while preserving public safety and existing
47 resources, including natural resources.
48 2. The criteria for review under s. 161.053 are applicable
49 within the pilot project area, except that the structures within
50 the pilot project area shall not be subject to specific shore

51 parallel coverage requirements and are allowed to exceed the 50
52 percent impervious surface requirement. In no case shall
53 stormwater discharge be allowed onto, or seaward of, the frontal
54 dune. Structures are also not bound by the restrictions on
55 excavation unless the construction will adversely affect the
56 integrity of the existing seawall or rigid coastal armoring
57 structure or stability of the existing beach and dune system. It
58 is specifically contemplated that underground structures,
59 including garages, will be permitted. All beach-compatible
60 material excavated under this subparagraph must be maintained on
61 site seaward of the coastal construction control line. <u>However,</u>
62 <u>during the permit-review process, pursuant to s. 161.053, the</u>
63 <u>department may favorably consider authorized sand placement on</u>
64 <u>adjacent properties if the permittee has demonstrated every</u>
65 <u>reasonable effort to effectively use all beach-quality material</u>
66 <u>on site to enhance the beach and dune system, and has prepared a</u>
67 <u>comprehensive plan for beach and dune nourishment for the</u>
68 <u>adjoining area.</u>
69 3. The review criteria in subparagraph 2. will apply to
70 all construction within the pilot project area lying seaward of
71 the coastal construction control line and landward of an
72 existing viable seawall or rigid coastal armoring structure, if
73 such construction is fronted by a seawall or rigid coastal
74 armoring structure extending at least 1,000 feet without any
75 interruptions other than beach access points. For purposes of
76 this section, a viable seawall or rigid coastal armoring
77 structure is a structure that has not deteriorated, dilapidated,
78 or been damaged to such a degree that it no longer provides
79 adequate protection to the upland property when considering the
80 following criteria, including, but not limited to:

81 a. The top must be at or above the still water level,
82 including setup, for the design storm of 30-year return storm
83 plus the breaking wave calculated at its highest achievable
84 level based on the maximum eroded beach profile and highest
85 surge level combination, and must be high enough to preclude
86 runup overtopping;
87 b. The armoring must be stable under the design storm of
88 30-year return storm, including maximum localized scour, with
89 adequate penetration; and
90 c. The armoring must have sufficient continuity or return
91 walls to prevent flooding under the design storm of 30-year
92 return storm from impacting the proposed construction.
93 4. Where there exists a continuous line of rigid coastal
94 armoring structure on either side of unarmored property and the
95 adjacent line of rigid coastal armoring structures are having an
96 adverse effect on or threaten the unarmored property, and the
97 gap does not exceed 100 feet, the department may grant the
98 necessary permits under s. 161.085 to close the gap.
99 5. Structures approved pursuant to this section shall not
100 cause flooding of or result in adverse impacts to existing
101 upland structures or properties and shall comply with all other
102 requirements of s. 161.053 and its implementing rules.
103 6. Where there exists a continuous line of viable rigid
104 coastal armoring structure on either side of a nonviable rigid
105 coastal armoring structure, the department shall grant the
106 necessary permits under s. 161.085 to replace such nonviable
107 rigid coastal armoring structure with a viable rigid coastal
108 armoring structure as defined in this section. This shall not
109 apply to rigid coastal armoring structures constructed after May

110 1, 1998, unless such structures have been permitted pursuant to
111 s. 161.085(2).
112 (3) PILOT PROJECT EXPIRATION.--The authorization for the
113 pilot project and the provisions of this section expire December
114 31, 2014 ~~2006~~. The department and affected local governments
115 shall provide for an independent analysis of the economic value
116 and environmental impact of the pilot project and provide a
117 report to the Legislature on or before February 1, 2008. ~~The~~
118 ~~Legislature shall review these requirements before their~~
119 ~~scheduled expiration.~~
120
121 ========== T I T L E A M E N D M E N T ==========
122 Remove line 26 and insert:
123 163.336, F.S.; revising the requirements for the placement
124 of beach-compatible material that is excavated during the
125 coastal resort area redevelopment pilot project; extending the
126 expiration date of this pilot project; requiring a report;
127 amending s. 381.0065, F.S.; requiring the issuance of certain
128 permits

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 1359 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Benson offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 107-110
6
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove lines 20-21 and insert:
10 Providing a deadline for local governments

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 CS PCB AG 06-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	6 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Davis	Dixon
2) State Resources Council		Kaiser	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7075 addresses a variety of issues relating to the Department of Agriculture and Consumer Services. In regards to pest control, the bill amends the definition of "employee" to clarify this person is not independent of, but under the direct control of a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee. Additionally, the bill amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation. The bill provides more flexibility in the development of rules to accommodate new types of pesticides used for preventive treatments of subterranean termites in new construction. And lastly, the bill expands the products a Limited Commercial Landscape Maintenance (LCLM) certificate holder may apply to include fungicides and allows the LCLM certificate holder to provide proof of insurance once he/she has passed the certification examination.

In regards to mosquito control, the bill clarifies that the exemption to regulation under the pest control law applies only to those programs established and operated in accordance with the provisions of the mosquito control law.

The bill provides authorization to the department to develop a Farm-to-Fuel initiative to market and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council. The bill provides for all members of the Soil and Water Conservation Council to be voting members. The bill removes the words "Form 51" in reference to the Rabies Vaccination Certificate to conform to federal law. The bill provides an exemption from food inspection for cane syrup. The bill includes a provision making it a felony to trespass on an agricultural chemicals manufacturing facility that is legally posted. And lastly, the bill designates the agricultural inspection station in Escambia County as the Austin Dewey Gay Agricultural Inspection station.

The bill has an indeterminate but minimal fiscal impact on state government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: By requiring all identification cardholders to be employees of a pest control business licensee, only persons who are adequately trained and supervised may apply pest control substances.

B. EFFECT OF PROPOSED CHANGES:

Pest Control

Currently, each employee who performs pest control for a pest control licensee in Florida is required[1] to have an identification card issued by the Department of Agriculture and Consumer Services (department). Additionally, the law requires the identification card holder to be an employee, as defined by s. 482.021(7), F.S., and prohibits independent contractors from being issued identification cards.[2]

The Bureau of Entomology and Pest Control (bureau), within the department reports that recent investigations have determined that an unknown number of business licensees have been obtaining identification cards for individuals who are operating as independent business entities. Independent business entities who secure their own clients, collect money for their services, and provide their own vehicles and equipment, operate without the level of supervision and training typical of identification cardholders who are truly employees of pest control licensees. The department fears the lack of supervision and training provided to independent business entities, as well as a lack of liability insurance, present a danger to public safety.

The current definition of independent contractor requires several elements of independent activity be present before disciplinary action can be taken against a business licensee and the identification card of the independent contractor can be revoked. The department reports this increases the level of difficulty for developing evidence for a disciplinary action, as well as allowing business licensees to continue to provide identification cards to independent contractors.

The bill amends the definition of "employee" to clarify this person is not independent of, but under the direct control of, a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee, as defined in s. 482.021(7), F.S. Additionally, the bill amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation.

The department currently has rule-making authority[3] regarding the application of pesticides used in the preventive treatment for subterranean termites for new construction. This provision was established when the primary treatment was the application of large volumes of insecticides to the soil during construction. Since that time, new treatment methods have been developed, such as baiting systems, non-repellant termiticides, and direct application to wood. The bill provides more flexibility in the development of rules regarding these types of treatments.

Florida law[4] establishes a certification category for persons who wish to apply certain low-risk pesticides to plant beds and ornamentals as part of landscape maintenance activities. Only persons who acquire this certification are authorized to perform the application. To date, approximately 3,200

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[1] s. 482.091(1)(a), F.S.
[2] "Independent contractor" is defined in s. 482.021(12), F.S.
[3] s. 482.051(5), F.S.
[4] s. 482.156, F.S.

Limited Commercial Landscape Maintenance (LCLM) certifications have been issued to persons who work in the landscape maintenance industry and apply pesticides as part of their services. Chapter 482, F.S., places restrictions on the areas and types of pesticides certificate holders may apply. As technology has improved and new products have been developed, current law limits the ability of the certificate holders to perform landscape maintenance activities properly. The bill expands the types of products the certificate holders may apply to include fungicides.

Additionally, current law requires those seeking certification to obtain proof of insurance **prior** to passing the examination. According to the department, this requirement places an undue burden on applicants. The department estimates approximately 30,000 persons in the industry require LCLM certification. Voluntary compliance is, in part, hindered by current statutory requirements. The bill amends current law to require proof of insurance **after** passing the examination. The department believes this will result in increased compliance with the Florida Structural Pest Control Act and increase the number of individuals who will benefit from the pesticide application and safety training provided as part of the certification process.

The bill eliminates an exemption allowing a yard worker to apply a pesticide at a property owner's residence using pesticides supplied by the property owner.

Mosquito Control
Mosquito control is, in general, regulated by Chapter 388, F.S. Section 482.211, F.S., deals with the establishment and regulation of mosquito control programs operated by local governments. According to the department, a number of private companies have recently begun advertising mosquito control application services for consumers.

The bill clarifies that the exemption to regulation under Chapter 482, F.S., applies only to those programs established and operated in accordance with the provisions of Chapter 388, F.S. The department believes this will prevent unlicensed and untrained operators from conducting pest control activities under the guise of mosquito control.

Florida Food Safety and Food Defense Advisory Council
During the 2003 legislative session, the Florida Food Safety and Food Security Advisory Council (council) was created. The council had previously existed as an *ad hoc* task force created by the Commissioner of Agriculture to ensure the safety of Florida's food supply in the aftermath of 9-11 and the Mad Cow disease outbreak in Europe. The council is composed of representatives from every facet of the food industry: production, processing, distribution, sales, consumers, food industry groups, experts in food safety, agencies charged with food safety oversight, and legislative representatives. The council provides a forum for presenting, investigating, and evaluating issues of current importance in food safety. During the course of its meetings, it came to the attention of the council that, in many nations, "food security" refers to maintaining an availability of an adequate supply of food. "Food defense" is used to refer to the "protection" of the food supply. The federal government is in the process of making the necessary changes to conform with those in use internationally and encourages states to do the same.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council.

Farm-to-Fuel
The United States Environmental Protection Agency (EPA) recently developed new standards paving the way for the Renewable Fuel Standard Program. This program focuses on reducing vehicle emissions and reducing the United States dependency on foreign energy sources by increasing the use of fuels produced from American crops by 2012. The new standards complement the Energy Policy Act of 2005, which requires that 2.78 percent of the gasoline sold or dispensed to U.S. motorists in

2006 be renewable fuel. Various renewable fuels can be used to meet the requirements of the program, including ethanol and bio-diesel.[5]

The bill provides authorization to the department to develop a Farm-to-Fuel initiative to market and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

Food Safety
The department is charged with inspecting and permitting food processors and food establishments to ensure a safe food supply for the people of the state. On occasion, the department exempts certain food products from the inspection process when the product does not present a serious health hazard.

The bill provides an exemption from inspection for cane syrup produced in the state as long as the syrup is labeled with the producer's name and address, product type, net weight or volume of product, and the statement, "This product has not been produced in a facility inspected and permitted by the Florida Department of Agriculture and Consumer Services."

Soil and Water Conservation Council
Also during the 2003 legislative session, the Agricultural Water Policy Group was integrated into the Soil and Water Conservation Council (council) by adding twelve non-voting *ex officio* members. These members represented the same interest groups that were represented in the Water Policy Group and are appointed by recommendations from the various interest groups.

In the two years since the integration, the council has become more diverse with a high level of participation from all members, voting or not. At the recommendation of the chair of the council, and with the support of the Commissioner of Agriculture, the bill provides for all members of the council to be voting members.

Trespassing
Current law provides penalties for trespassing on certain agricultural facilities that are legally posted, such as commercial horticulture property and agriculture sites used for testing and research purposes. Recently, instances have been reported of trespassers at agricultural chemicals manufacturing facilities. However, because these facilities are patrolled by security guards who are not authorized to hold persons for offenses less than a felony, the trespassers are unable to be detained.

This legislation makes it a felony of the third degree to trespass on an agricultural chemicals manufacturing facility that is legally posted. The bill also provides a definition for "agricultural chemicals manufacturing facility."

Rabies Vaccination
Due to a change in forms at the federal level, it is necessary to amend current Florida statutes to reflect the change at the state level. The bill removes the words "Form 51" in reference to the Rabies Vaccination Certificate.

Implementation of Total Maximum Daily Loads (TMDLs)
In 2005, there was a significant rewrite to the Florida Watershed Restoration Act. During this rewrite, incentives related to TMDLs were unintentionally eliminated.

The bill corrects a cross-reference and makes other technical changes to reestablish the incentives. The bill further provides that there is a presumption of compliance with state water quality standards for

[5] www.florida-agriculture.com/farmtofuel

those research sites funded by the Department of Environmental Protection (DEP), a water management district, or the department to develop or demonstrate interim measures or best management practices.

Inspection Stations
The bill designates the agricultural inspection station in Escambia County as the "Austin Dewey Gay Memorial Agricultural Inspection Station" and directs the department to erect suitable markers.

C. SECTION DIRECTORY:

Section 1: Amends s. 403.067, F.S.; correcting a cross-reference and making technical changes related reestablishing incentives.

Section 2: Amends s. 482.021, F.S.; revising definitions.

Section 3: Amends s. 482.051, F.S.; revising requirements regarding rule adoption as it relates to pesticides for subterranean termites.

Section 4: Amends s. 482.091, F.S.; clarifying provisions related to identification cards for pest control personnel.

Section 5: Amends s. 482.156, F.S.; requiring certification of commercial landscape personnel; revising materials used; removing obsolete provisions relating to fees.

Section 6: Amends s. 482.211, F.S.; providing an exemption for local governments relating to mosquito control.

Section 7: Amends s. 500.033, F.S.; renaming the Florida Food Safety and Food Security Advisory Council.

Section 8: Amends s. 500.12, F.S.; providing an exemption from inspection for cane syrup with conditions.

Section 9: Creates s. 570.954, F.S.; authorizing a Farm-to-Fuel initiative between the Department of Agriculture and Consumer Services and the Department of Environmental Protection to market and promote the production and distribution of renewable energy.

Section 10: Amends s. 582.06, F.S.; revising the composition of the Soil and Water Conservation Council.

Section 11: Amends s. 810.09, F.S.; establishing a third degree felony for trespassing on an agricultural chemicals manufacturing facility with appropriate signage.

Section 12: Amends s. 810.011, F.S.; defines "agricultural chemicals manufacturing facility."

Section 13: Amends s. 828.30, F.S.; updating a reference to the Rabies Vaccination Certificate.

Section 14: Designates an agricultural inspection station in Escambia County and provides direction for markers.

Section 15: Repeals subsection (11) of s. 482.211, F.S.

Section 16: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate, minimal. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) has not considered the prison bed impact, if any, of the third degree felony in the bill. The bill creates a third degree felony for trespassing on an agricultural chemicals manufacturing facility which contains appropriate signage. Typically, the CJIC estimates a third degree felony that does not change the offense severity ranking chart will have an insignificant prison bed impact, absent any significant prior criminal history. Probation, a likely non-prison sanction, has an indeterminate but probably minimal fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not 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 & COMBINED BILL CHANGES

On April 17, 2006, the Agriculture and Environment Appropriations Committee adopted a strike-all amendment and an amendment to the strike-all to HB 7075. The strike-all amendment:

- Changed the hours of classroom training for commercial landscapers from 8 to 6 and eliminated the requirement for being in the landscape business for 3 years as an eligibility requirement to sit for the examination;
- Clarified that the exemption for mosquito control also applies to programs established by a special act;
- Removed the Farm to Fuel program and tax credit from the bill;
- Included a provision making it a felony to trespass on an agricultural chemicals manufacturing facility that is legally posted;
- Corrected cross-references related to total maximum daily loads that were unintentionally eliminated during the rewrite of the Florida Watershed Restoration Act in 2005;
- Repealed an exemption allowing a yard worker to apply a pesticide at a property owner's residence using pesticides supplied by the property owner; and
- Designated the agricultural inspection station in Escambia County as the "Austin Dewey Gay Agricultural Inspection Station."

The amendment to the strike-all amendment authorizes the department to develop a Farm to Fuel initiative to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. This could include a statewide information and education program aimed at educating the general public regarding the benefits of renewable energy and the use of alternative fuels. If developed, this initiative must be coordinated and implemented with input from the Department of Environmental Protection.

The analysis is drawn to bill as amended.

CHAMBER ACTION

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1 The Agriculture & Environment Appropriations Committee
2 recommends the following:
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4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the Department of Agriculture and
8 Consumer Services; amending s. 403.067, F.S.; clarifying
9 rulemaking authority relating to pollution reduction;
10 granting presumption of compliance with water quality
11 standards for certain research; releasing certain research
12 from penalties relating to the discharge of pollutants;
13 amending s. 482.021, F.S.; revising the definitions of the
14 terms "employee" and "independent contractor" for purposes
15 of pest control regulation; amending s. 482.051, F.S.;
16 revising certain requirements of the department to adopt
17 rules relating to the use of pesticides for preventing
18 subterranean termites in new construction; amending s.
19 482.091, F.S.; clarifying provisions governing the
20 performance of pest control services; amending s. 482.156,
21 F.S.; requiring certification of individual commercial
22 landscape maintenance personnel; revising the types of
23 materials such personnel may use; removing obsolete

24 provisions relating to fees; revising requirements
25 relating to proof of education and insurance; revising the
26 amount of required continuing education; removing a
27 requirement for certain business experience; amending s.
28 482.211, F.S.; clarifying exemption of certain mosquito
29 control activities from regulation; amending s. 500.033,
30 F.S.; renaming the Florida Food Safety and Food Security
31 Advisory Council as the Florida Food Safety and Food
32 Defense Advisory Council and revising duties accordingly;
33 amending s. 500.12, F.S.; providing an exemption from
34 certain food inspections by the department; creating s.
35 570.954, F.S.; authorizing the department, in consultation
36 with the state energy office within the Department of
37 Environmental Protection, to develop a farm-to-fuel
38 initiative; providing purposes of the initiative;
39 providing for a statewide information and education
40 program; amending s. 582.06, F.S.; revising the membership
41 of the Soil and Water Conservation Council; amending s.
42 810.09, F.S.; providing criminal penalties for trespassing
43 on certain property; requiring warning signage; amending
44 s. 810.011, F.S.; defining "agricultural chemicals
45 manufacturing facility"; amending s. 828.30, F.S.;
46 updating references to the Rabies Vaccination Certificate;
47 designating the Austin Dewey Gay Memorial Agricultural
48 Inspection Station in Escambia County; directing the
49 department to erect suitable markers; repealing s.
50 482.211(11), F.S.; removing an exemption from ch 482,
51 F.S., for a yard worker when applying pesticide to the

52 lawn or ornamental plants of an individual residential
53 property owner under certain circumstances; providing an
54 effective date.
55
56 Be It Enacted by the Legislature of the State of Florida:
57
58 Section 1. Paragraph (c) of subsection (7) and paragraph
59 (b) of subsection (11) of section 403.067, Florida Statutes, are
60 amended to read:
61 403.067 Establishment and implementation of total maximum
62 daily loads.--
63 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
64 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--
65 (c) Best management practices.--
66 1. The department, in cooperation with the water
67 management districts and other interested parties, as
68 appropriate, may develop suitable interim measures, best
69 management practices, or other measures necessary to achieve the
70 level of pollution reduction established by the department for
71 nonagricultural nonpoint pollutant sources in allocations
72 developed pursuant to subsection (6) and this subsection. These
73 practices and measures may be adopted by rule by the department
74 and the water management districts pursuant to ss. 120.536(1)
75 and 120.54, and, where adopted by rule, shall be implemented by
76 those parties responsible for nonagricultural nonpoint source
77 pollution.
78 2. The Department of Agriculture and Consumer Services may
79 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54

80 suitable interim measures, best management practices, or other
81 measures necessary to achieve the level of pollution reduction
82 established by the department for agricultural pollutant sources
83 in allocations developed pursuant to subsection (6) and this
84 subsection or for programs implemented pursuant to paragraph
85 (11)(b). These practices and measures may be implemented by
86 those parties responsible for agricultural pollutant sources and
87 the department, the water management districts, and the
88 Department of Agriculture and Consumer Services shall assist
89 with implementation. In the process of developing and adopting
90 rules for interim measures, best management practices, or other
91 measures, the Department of Agriculture and Consumer Services
92 shall consult with the department, the Department of Health, the
93 water management districts, representatives from affected
94 farming groups, and environmental group representatives. Such
95 rules shall also incorporate provisions for a notice of intent
96 to implement the practices and a system to assure the
97 implementation of the practices, including recordkeeping
98 requirements.
99 3. Where interim measures, best management practices, or
100 other measures are adopted by rule, the effectiveness of such
101 practices in achieving the levels of pollution reduction
102 established in allocations developed by the department pursuant
103 to subsection (6) and this subsection or in programs implemented
104 pursuant to paragraph (11)(b) shall be verified at
105 representative sites by the department. The department shall use
106 best professional judgment in making the initial verification
107 that the best management practices are reasonably expected to be

108 effective and, where applicable, shall notify the appropriate
109 water management district or ~~and~~ the Department of Agriculture
110 and Consumer Services of its initial verification prior to the
111 adoption of a rule proposed pursuant to this paragraph.
112 Implementation, in accordance with rules adopted under this
113 paragraph, of practices that have been initially verified to be
114 effective, or verified to be effective by monitoring at
115 representative sites, by the department, shall provide a
116 presumption of compliance with state water quality standards and
117 release from the provisions of s. 376.307(5) for those
118 pollutants addressed by the practices, and the department is not
119 authorized to institute proceedings against the owner of the
120 source of pollution to recover costs or damages associated with
121 the contamination of surface water or groundwater caused by
122 those pollutants. Research funded by the department, a water
123 management district, or the Department of Agriculture and
124 Consumer Services to develop or demonstrate interim measures or
125 best management practices is granted a presumption of compliance
126 with state water quality standards and release from the
127 provisions of s. 376.307(5), which are limited to the research
128 site for those pollutants addressed by the practices.
129 4. Where water quality problems are demonstrated, despite
130 the appropriate implementation, operation, and maintenance of
131 best management practices and other measures according to rules
132 adopted under this paragraph, the department, a water management
133 district, or the Department of Agriculture and Consumer
134 Services, in consultation with the department, shall institute a
135 reevaluation of the best management practice or other measure.

136 Should the reevaluation determine that the best management
137 practice or other measure requires modification, the department,
138 a water management district, or the Department of Agriculture
139 and Consumer Services, as appropriate, shall revise the rule to
140 require implementation of the modified practice within a
141 reasonable time period as specified in the rule.
142 5. Individual agricultural records relating to processes
143 or methods of production, or relating to costs of production,
144 profits, or other financial information which are otherwise not
145 public records, which are reported to the Department of
146 Agriculture and Consumer Services pursuant to subparagraphs 3.
147 and 4. or pursuant to any rule adopted pursuant to subparagraph
148 2. shall be confidential and exempt from s. 119.07(1) and s.
149 24(a), Art. I of the State Constitution. Upon request of the
150 department or any water management district, the Department of
151 Agriculture and Consumer Services shall make such individual
152 agricultural records available to that agency, provided that the
153 confidentiality specified by this subparagraph for such records
154 is maintained. This subparagraph is subject to the Open
155 Government Sunset Review Act of 1995 in accordance with s.
156 119.15, and shall stand repealed on October 2, 2006, unless
157 reviewed and saved from repeal through reenactment by the
158 Legislature.
159 6. The provisions of subparagraphs 1. and 2. shall not
160 preclude the department or water management district from
161 requiring compliance with water quality standards or with
162 current best management practice requirements set forth in any
163 applicable regulatory program authorized by law for the purpose

164 of protecting water quality. Additionally, subparagraphs 1. and
165 2. are applicable only to the extent that they do not conflict
166 with any rules adopted by the department that are necessary to
167 maintain a federally delegated or approved program.
168 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--
169 (b) Interim measures, best management practices, or other
170 measures may be developed and voluntarily implemented pursuant
171 to paragraph ~~subparagraphs~~ (7)(c)~~1. and 2.~~ for any water body or
172 segment for which a total maximum daily load or allocation has
173 not been established. The implementation of such pollution
174 control programs may be considered by the department in the
175 determination made pursuant to subsection (4).
176 Section 2. Subsections (7) and (12) of section 482.021,
177 Florida Statutes, are amended to read:
178 482.021 Definitions.--For the purposes of this chapter,
179 and unless otherwise required by the context, the term:
180 (7) "Employee" means a person who is employed by a
181 licensee that provides that person with necessary training,
182 supervision, pesticides, equipment, and insurance and who
183 receives compensation from and is under the personal supervision
184 and direct control of the licensee's certified operator in
185 charge and ~~licensee~~ from whose ~~which~~ compensation ~~of~~ the
186 licensee regularly deducts and matches federal insurance
187 contributions and federal income and Social Security taxes.
188 (12) "Independent contractor" means an entity separate
189 from the licensee that:
190 (a) Receives moneys from a customer which are deposited in
191 a bank account other than that of the licensee;

192 (b) Owns or supplies its own service vehicle, equipment,
193 and pesticides; ~~or~~
194 (c) Maintains a business operation, office, or support
195 staff independent of the licensee's direct control;
196 (d) Pays its own operating expenses such as fuel,
197 equipment, pesticides, and materials; or
198 (e) ~~(c)~~ Pays its own workers' ~~worker's~~ compensation as an
199 independent contractor.
200 Section 3. Subsection (5) of section 482.051, Florida
201 Statutes, is amended to read:
202 482.051 Rules.--The department has authority to adopt
203 rules pursuant to ss. 120.536(1) and 120.54 to implement the
204 provisions of this chapter. Prior to proposing the adoption of a
205 rule, the department shall counsel with members of the pest
206 control industry concerning the proposed rule. The department
207 shall adopt rules for the protection of the health, safety, and
208 welfare of pest control employees and the general public which
209 require:
210 (5) That any pesticide used as the primary preventive
211 treatment for ~~preconstruction treatments for the prevention of~~
212 subterranean termites in new construction be applied in the
213 amount, concentration, and treatment area in accordance with the
214 label; that a copy of the label of the registered pesticide
215 being applied be carried in a vehicle at the site where the
216 pesticide is being applied; and that the licensee maintain for 3
217 years the record of each preconstruction treatment, indicating
218 the date of treatment, the location or address of the property
219 treated, the total square footage of the structure treated, the

220 type of pesticide applied, the concentration of each substance
221 in the mixture applied, and the total amount of pesticide
222 applied.
223 Section 4. Paragraph (a) of subsection (2) of section
224 482.091, Florida Statutes, is amended to read:
225 482.091 Employee identification cards.--
226 (2)(a) An identification cardholder must be an employee of
227 the licensee and work under the direction and supervision of the
228 licensee's certified operator in charge and shall ~~may~~ not be an
229 independent contractor. An identification cardholder shall
230 operate ~~may perform~~ only ~~pest control services~~ out of, and ~~or~~
231 for customers assigned ~~arising~~ from, the licensee's licensed
232 business location. An identification cardholder shall ~~may~~ not
233 perform any pest control independently of and without the
234 knowledge of the licensee and the licensee's certified operator
235 in charge and shall ~~may~~ perform pest control only for the
236 licensee's customers.
237 Section 5. Subsections (1), (2), and (3) of section
238 482.156, Florida Statutes, are amended to read:
239 482.156 Limited certification for commercial landscape
240 maintenance personnel.--
241 (1) The department shall establish a limited certification
242 category for individual commercial landscape maintenance
243 personnel to authorize them to apply herbicides for controlling
244 weeds in plant beds and to perform integrated pest management on
245 ornamental plants using ~~the following materials:~~ insecticides
246 and fungicides having the signal word "caution" but not having
247 the word "warning" or "danger" on the label~~, insecticidal soaps,~~

248 ~~horticultural oils, and bacillus thuringiensis formulations~~. The
249 application equipment that may be used by a person certified
250 pursuant to this section is limited to portable, handheld 3-
251 gallon compressed air sprayers or backpack sprayers having no
252 more than a 5-gallon capacity and does not include power
253 equipment.
254 (2)(a) A person seeking limited certification under this
255 section must pass an examination given by the department. Each
256 application for examination must be accompanied by an
257 examination fee set by rule of the department, in an amount of
258 not more than $150 or less than $50~~; however, until a rule~~
259 ~~setting this fee is adopted by the department, the examination~~
260 ~~fee is $50~~. Prior to the department's issuing a limited
261 certification under this section, each person applying ~~making~~
262 ~~application~~ for the certification ~~under this section~~ must
263 furnish proof of having a certificate of insurance which states
264 that the employer meets the requirements for minimum financial
265 responsibility for bodily injury and property damage required by
266 s. 482.071(4).
267 (b) To be eligible to take the examination, an applicant
268 must have completed 6 ~~8~~ classroom hours of plant bed and
269 ornamental continuing education training approved by the
270 department and provide sufficient proof, according to criteria
271 established by department rule, of having successfully completed
272 the continuing education training ~~that the applicant has been in~~
273 ~~the landscape maintenance business for at least 3 years~~.
274 ~~(b)~~ The department shall provide the appropriate reference
275 materials for the examination and make the examination readily

276 accessible and available to applicants at least quarterly or as
277 necessary in each county.
278 (3) An application for recertification under this section
279 must be made annually and be accompanied by a recertification
280 fee set by rule of the department, in an amount of not more than
281 $75 or less than $25~~; however, until a rule setting this fee is~~
282 ~~adopted by the department, the fee for recertification is $25~~.
283 The application must also be accompanied by proof of having
284 completed 4 classroom hours of acceptable continuing education
285 and the same proof of having a certificate of insurance as is
286 required for issuance of this ~~initial~~ certification. After a
287 grace period not exceeding 30 calendar days following the annual
288 date that recertification is due, a late renewal charge of $50
289 shall be assessed and must be paid in addition to the renewal
290 fee. Unless timely recertified, a certificate automatically
291 expires 180 calendar days after the anniversary recertification
292 date. Subsequent to such expiration, a certificate may be issued
293 only upon successful reexamination and upon payment of the
294 examination fees due.
295 Section 6. Subsection (7) of section 482.211, Florida
296 Statutes, is amended to read:
297 482.211 Exemptions.--This chapter does not apply to:
298 (7) ~~Area~~ Mosquito control activities conducted by a local
299 government or district established under chapter 388, by special
300 act, or by a contractor of the local government or district.
301 Section 7. Section 500.033, Florida Statutes, is amended
302 to read:

303 500.033 Florida Food Safety and Food Defense ~~Security~~
304 Advisory Council.--
305 (1) There is created the Florida Food Safety and Food
306 Defense ~~Security~~ Advisory Council for the purpose of serving as
307 a forum for presenting, investigating, and evaluating issues of
308 current importance to the assurance of a safe and secure food
309 supply to the citizens of Florida. The Florida Food Safety and
310 Food Defense ~~Security~~ Advisory Council shall consist of, but not
311 be limited to: the Commissioner of Agriculture or his or her
312 designee; the Secretary of Health or his or her designee; the
313 Secretary of Business and Professional Regulation or his or her
314 designee; the person responsible for domestic security with the
315 ~~Florida~~ Department of Law Enforcement; members representing the
316 production, processing, distribution, and sale of foods;
317 consumers or ~~and/or~~ members of citizens groups; representatives
318 of ~~or~~ food industry groups; scientists or other experts in
319 aspects of food safety from state universities; representatives
320 from local, state, and federal agencies that are charged with
321 responsibilities for food safety or food defense ~~security~~; the
322 chairs of the Agriculture Committees of the Senate and the House
323 of Representatives or their designees; and the chairs of the
324 committees of the Senate and the House of Representatives with
325 jurisdictional oversight of home defense issues or their
326 designees. The Commissioner of Agriculture shall appoint the
327 remaining members. The council shall make periodic reports to
328 the Department of Agriculture and Consumer Services concerning
329 findings and recommendations in the area of food safety and food
330 defense ~~security~~.

331 (2) The council shall consider the development of
332 appropriate advice or recommendations on food safety or food
333 defense ~~security~~ issues. In the discharge of their duties, the
334 council members may receive for review confidential data exempt
335 from the provisions of s. 119.07(1); however, it is unlawful for
336 any member of the council to use the data for his or her
337 advantage or reveal the data to the general public.
338 Section 8. Paragraph (a) of subsection (1) of section
339 500.12, Florida Statutes, is amended to read:
340 500.12 Food permits; building permits.--
341 (1)(a) A food permit from the department is required of
342 any person who operates a food establishment or retail food
343 store, except:
344 1. Persons operating minor food outlets, including, but
345 not limited to, video stores, that sell commercially
346 prepackaged, nonpotentially hazardous candy, chewing gum, soda,
347 or popcorn, provided the shelf space for those items does not
348 exceed 12 linear feet and no other food is sold by the minor
349 food outlet.
350 2. Persons subject to continuous, onsite federal or state
351 inspection.
352 3. Persons selling only legumes in the shell, either
353 parched, roasted, or boiled.
354 4. Persons producing and selling in the state 100-percent
355 Florida sugar cane syrup directly to the consumer or at a
356 roadside stand, farmers' market, or similar location, provided
357 each container or bottle of syrup is labeled and the label
358 states the producer's name and address, the product type, and

359 the net weight or volume of the product and includes the
360 statement: "This product has not been produced in a facility
361 inspected and permitted by the Florida Department of Agriculture
362 and Consumer Services."
363 Section 9. Section 570.954, Florida Statutes, is created
364 to read:
365 570.954 Farm-to-fuel initiative.--
366 (1) The department may develop a farm-to-fuel initiative
367 to enhance the market for and promote the production and
368 distribution of renewable energy from Florida-grown crops,
369 agricultural wastes and residues, and other biomass and to
370 enhance the value of agricultural products or expand
371 agribusiness in the state.
372 (2) The department may conduct a statewide comprehensive
373 information and education program aimed at educating the general
374 public about the benefits of renewable energy and the use of
375 alternative fuels.
376 (3) The department shall coordinate with and solicit the
377 expertise of the state energy office within the Department of
378 Environmental Protection when developing and implementing this
379 initiative.
380 Section 10. Paragraphs (b) and (c) of subsection (1) of
381 section 582.06, Florida Statutes, are amended to read:
382 582.06 Soil and Water Conservation Council; powers and
383 duties.--
384 (1) COMPOSITION.--The Soil and Water Conservation Council
385 is created in the Department of Agriculture and Consumer
386 Services and shall be composed of 23 members as follows:

387 (b) Twelve ~~nonvoting ex officio~~ members shall include one
388 representative each from the Department of Environmental
389 Protection, the five water management districts, the Institute
390 of Food and Agricultural Sciences at the University of Florida,
391 the United States Department of Agriculture Natural Resources
392 Conservation Service, the Florida Association of Counties, and
393 the Florida League of Cities~~,~~ and two representatives of
394 environmental interests.
395 (c) All members shall be appointed by the commissioner. ~~Ex~~
396 ~~officio~~ Members appointed pursuant to paragraph (b) shall be
397 appointed by the commissioner from recommendations provided by
398 the organization or interest represented.
399 Section 11. Paragraph (h) is added to subsection (2) of
400 section 810.09, Florida Statutes, to read:
401 810.09 Trespass on property other than structure or
402 conveyance.--
403 (2)
404 (h) The offender commits a felony of the third degree,
405 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
406 if the property trespassed upon is an agricultural chemicals
407 manufacturing facility that is legally posted and identified in
408 substantially the following manner: "THIS AREA IS A DESIGNATED
409 AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO
410 TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
411 Section 12. Subsection (12) is added to section 810.011,
412 Florida Statutes, to read:
413 810.011 Definitions.--As used in this chapter:

414 (12) "Agricultural chemicals manufacturing facility" means
415 any facility, and any properties or structures associated with
416 the facility, used for the manufacture, processing, or storage
417 of agricultural chemicals classified in Industry Group 287
418 contained in the Standard Industrial Classification Manual,
419 1987, as published by the Office of Management and Budget,
420 Executive Office of the President.
421 Section 13. Subsection (3) of section 828.30, Florida
422 Statutes, is amended to read:
423 828.30 Rabies vaccination of dogs, cats, and ferrets.--
424 (3) Upon vaccination against rabies, the licensed
425 veterinarian shall provide the animal's owner and the animal
426 control authority with a rabies vaccination certificate. Each
427 animal control authority and veterinarian shall use the ~~Form 51,~~
428 "Rabies Vaccination Certificate~~,~~" of the National Association of
429 State Public Health Veterinarians (NASPHV) or an equivalent form
430 approved by the local government that contains all the
431 information required by the NASPHV Rabies Vaccination
432 Certificate ~~Form 51~~. The veterinarian who administers the rabies
433 vaccine to an animal as required under this section may affix
434 his or her signature stamp in lieu of an actual signature.
435 Section 14. Austin Dewey Gay Memorial Agricultural
436 Inspection Station designated; Department of Agriculture and
437 Consumer Services to erect suitable markers.--
438 (1) The agricultural inspection station located at or near
439 mile marker 1 on Interstate Highway 10 in Escambia County is
440 designated as the "Austin Dewey Gay Memorial Agricultural
441 Inspection Station."

442 (2) The Department of Agriculture and Consumer Services is
443 directed to erect suitable markers designating the Austin Dewey
444 Gay Memorial Agricultural Inspection Station as described in
445 subsection (1).
446 Section 15. Subsection (11) of section 482.211, Florida
447 Statutes, is repealed.
448 Section 16. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7075 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Poppell offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 446-447
6
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove lines 50-53 and insert:
10 482.211(11), F.S.; providing an

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative Poppell offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 354-362 and insert:
6 4. Persons selling sugar cane or sorghum syrup which has
7 been boiled and bottled on a premise located within the state.
8 Such bottles must contain a label listing the producer's name
9 and address, and all added ingredients, and a statement which
10 reads, "This product has not been produced in a facility
11 permitted by the Florida Department of Agriculture and Consumer
12 Services".
13 Section 8. Subsection (1) of section 570.249, Florida
14 Statutes, is amended to read:
15 570.249 Agricultural Economic Development Program disaster
16 loans and grants and aid.--
17 (1) USE OF LOAN FUNDS.--
18 (a) Loan funds to agricultural producers who have
19 experienced ~~crop~~ losses from a natural disaster or a
20 socioeconomic condition or event may be used to:

21 1. Restore or replace essential physical property, ~~such as~~
22 ~~animals, fences, equipment, structural production facilities,~~
23 ~~and orchard trees;~~ or remove debris from essential physical
24 property.
25 2. Pay all or part of production costs associated with the
26 disaster year.~~;~~
27 3. Pay essential family living expenses.~~; and~~
28 4. Restructure farm debts.
29 (b) To be eligible, agricultural producers shall have no
30 more than 300 acres currently in production.
31 (c) Funds may be issued as direct loans, or as loan
32 guarantees for up to 90 percent of the total loan, in amounts
33 not less than $30,000 nor more than $300,000 ~~$250,000~~.
34 Applicants must provide at least 10 percent equity.
35 (d) For purposes of this subsection, the term:
36 1. "Losses" means loss or damage to crops, agricultural
37 products, agricultural facilities, infrastructure, or farmworker
38 housing.
39 2. "Essential physical property" means fences, equipment,
40 structural production facilities such as shade houses and
41 greenhouses, other agricultural facilities, infrastructure or
42 farmworker housing.
43
44
45 ========== T I T L E A M E N D M E N T ==========
46 Remove line 34 and insert:
47 certain food inspections by the department; amending s. 570.249,
48 F.S.; expanding the conditions under which loan funds to certain
49 agricultural producers may be granted; providing for

50 eligibility; increasing the maximum amount of a loan; providing
51 definitions; creating s.

HB 7131

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7131 PCB ENVR 06-02 Brownfields
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
1) Finance & Tax Committee	7 Y, 0 N	Levin	Diez-Arguelles
2) Transportation & Economic Development Appropriations Committee	(W/D)		
3) State Resources Council		Kliner	Hamby
4)			
5)			

SUMMARY ANALYSIS

This bill amends various provisions of the Florida Brownfield Redevelopment Act.

Specifically, the bill:

- Increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit applicant per year from $250,000 to $500,000;
- Increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from $50,000 to $500,000;
- Increases the total amount of tax credits which may be granted for brownfield cleanup from $2 million annually to $5 million annually;
- Expands the Voluntary Cleanup Tax Credit program to provide incentives for cleaning unlicensed, or promiscuous solid waste dumpsites;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and,
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

The fiscal impact of this bill is expected to be approximately negative ($3 million) in state revenues in both FY 2006-07 and FY 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes:
The bill provides an increase for the percentage of costs of voluntary cleanup activity from 35 percent to 50 percent eligible for a tax credit against intangible personal property tax or corporate income tax. The bill increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act, also known as the "Brownfields Amendments." The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

The Florida Brownfield Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent, a brownfield area designation process, environmental cleanup criteria, program eligibility and liability protections, and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provide for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Legislative intent

As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment.

Designation and administration—Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map or a detailed legal description of the brownfield area. The designation of a brownfield area may be initiated in one of two ways:

- By a local government to encourage redevelopment of an area of specific interest to the community; or
- By an individual with a redevelopment plan in mind.

In determining the area to be designated, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes. See, Section 376.80(2), F.S.

A local government shall designate a brownfield area if:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 10 new permanent jobs at the brownfield site;[1]
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program. As of February 1, 2006, there were 125 designated brownfield areas in Florida. According to information reported by the Governor's Office of Tourism, Trade, and Economic Development to the DEP in January 2006, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment program from inception of the program until December 31, 2005 are: 6,656 new direct jobs, 5,935 new indirect jobs, and $546,913,933 of capital investment in designated brownfields areas.

Cleanup criteria

Risk-based corrective-action principles apply, to the maximum extent feasible, to the cleanup activities on a brownfield site within a designated brownfield area. These principles are designed to achieve protection of human health and safety and the environment in a cost-effective manner by taking into account natural attenuation, individual site characteristics, and the use of engineering and institutional controls.

Eligibility and liability protection

A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, or sites that have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA.

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1 As specified in s. 376.80(2)(b), F.S., the 10 new permanent jobs may be full- or part-time and cannot be associated with the rehabilitation agreement or redevelopment project demolition or construction activities.

After July 1, 1997, petroleum and drycleaning contamination sites in a brownfield area cannot receive both funding assistance for the cleanup of the discharge that is available under the underground storage tank cleanup program or the drycleaning cleanup program and any state assistance available under s. 288.107, F.S., relating to brownfield redevelopment bonus refunds.

If a state or local government has acquired a contaminated site within a brownfield area, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants at the brownfield site. Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.

Economic and financial incentives

Since the Brownfields Redevelopment Act was envisioned to emphasize economic redevelopment, local governments were expected to play a significant role in the process. As a result, state and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance. Other economic and financial incentives available to brownfield sites are tax refunds for qualified target industries located in a brownfield area, brownfield redevelopment bonus refunds, and partial voluntary cleanup tax credits.

The tax refunds available may be for corporate income taxes, insurance premium taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, documentary stamp taxes, and ad valorem taxes.

The brownfield redevelopment bonus refunds of $2,500 are available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target industry's annual refund claim. Section 288.107, F.S., provides the minimum criteria for participation in the brownfield redevelopment bonus refund program.

Voluntary cleanup tax credit

One of the financial incentives that is getting increased attention as the brownfield program matures and gains in popularity is the voluntary cleanup tax credit or VCTC. This is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Brownfield Site Rehabilitation Agreement with the DEP.

The VCTC can apply toward either the intangible personal property tax or the corporate income tax. The amount of the credit is 35 percent of the costs of the voluntary cleanup activity that is integral to site rehabilitation. The maximum tax credit an applicant can receive is $250,000 per year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. However, the total amount of the tax credit that may be granted each year under the program is $2 million. To date, however, the total amount of applications for the tax credits has not reached the $2 million cap in any one year. DEP reports that from creation of the tax credit program in 1998 through FY 02-03, the total value of tax credits issued annually has nearly doubled each year. A total of $3,867,638 in tax credits have been issued since its inception in 1998. Of the total amount of tax credits issued, $3,098,752 (80 percent) have been issued for brownfield sites and $768,886 (20 percent) have been issued for

drycleaning solvent cleanup sites. Table A below, illustrates the fiscal year history associated with the voluntary tax credit program administered by DEP:

Table A

Fiscal Year	# Voluntary Cleanup Tax Credit Certificates Issued	Total $ Issued
FY 1998-1999	1	$30,228.13
FY 1999-2000	3	$118,438.25
FY 2000-2001	6	$213,851.71
FY 2001-2002	9	$494,193.72
FY 2002-2003	13	$1,068,049.29
FY 2003-2004	16	$1,014,834.47
FY 2004-2005	10	$928,042.19
FY 2005-2006	9	$1,010,086.10

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 10 per cent of the total cleanup costs, not to exceed $50,000 in the final year of cleanup. The tax credits may be transferred once to another entity in whole or in units of not less than 25 percent of the remaining credit.

According to industry representatives and the DEP, there are brownfield sites that are impacted by solid waste; however, due to a lack of "contamination" as defined by statute and rule the DEP lacks authorization to award tax credits associated with the solid waste cleanup.

Brownfield Areas Loan Guarantee Program

The Brownfield Areas Loan Guarantee Program was created in 1998. A Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. A loan guarantee may only be for a period of not more than 5 years.

The limited state loan guarantee applies to 10 percent of the primary lender's loans for redevelopment projects in brownfields areas. The loan guarantee holds until permanent financing is acquired or until the project is sold. Section 376.86, F.S., provides that no more than $5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. The loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund

Section 376.87, F.S., provides for brownfield property ownership clearance assistance. The Legislature recognized that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund was created to assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. The loans would be repaid in later years from the resale of the brownfield properties following site rehabilitation and other activities that will enhance the property's ultimate value. This trust fund has never been capitalized and used for its intended purposes.

Enterprise Florida, Inc.:

Enterprise Florida, Inc. (EFI) is the public-private partnership responsible for leading Florida's statewide economic development efforts. EFI was formed in July 1996, when Florida became the first state in the nation to replace its Commerce Department with a public-private organization that is responsible for economic development, international trade and statewide business marketing. EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping to create businesses in innovative, high-growth industries. [2] Currently, brownfields are not included in the types of communities that EFI is required to aggressively assist in economic development and jog growth.

Effect of Proposed Changes

- Increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit applicant per year from $250,000 to $500,000;
- Increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from $50,000 to $500,000;
- Increases the total amount of tax credits which may be granted for brownfield cleanup from $2 million annually to $5 million annually;
- Expands the Voluntary Cleanup Tax Credit program to provide incentives for cleaning unlicensed, or historic solid waste dumpsites;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and,
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

C. SECTION DIRECTORY:

Sections 1, 2, and 3. Sections 199.1055, 220.1845, and 376.30781, F.S., are amended to increase the tax credit that is available against either the intangible personal property tax or the corporate income tax for costs incurred for voluntary cleanup activity integral to site rehabilitation from 35 percent to 50 percent. Also, the amount of tax credit that may be granted to a tax credit applicant per year is increased from $250,000 to $500,000. Eligible sites are expended to include certain solid waste facilities.

To encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up, current law allows the applicant to claim an additional 10 percent of the total cleanup costs in the final year of cleanup up to $50,000. These sections are amended to increase the percentage to 25 percent and the maximum amount from $50,000 to $500,000. The total amount of the tax credit that may be granted annually is increased from $2 million to $5 million.

Section 4. Part VII of ch. 288, F.S., creates Enterprise Florida, Inc., as the principle economic development organization for the state. It is Enterprise Florida, Inc.'s responsibility to aggressively market Florida's rural communities, distressed urban communities, and enterprise zones as locations for potential new investment, to aggressively assist these communities in the identification and development of new economic opportunities for job creation, and to fully market state incentive programs such as the Qualified Target Industry Tax Refund Program and the Quick Action Closing Fund in economically distressed areas. This section amends s. 288.9015, F.S., to require Enterprise Florida, Inc., to aggressively market brownfields as locations for potential new investment.

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2 http://www.eflorida.com/aboutus/default.asp?tn=3

Section 5. This section amends s. 376.86, F.S., to increase the amount of the Brownfield Areas Loan Guarantee from 10 percent to 25 percent.

Section 6. This section repeals ss. 376.87 and 376.875, F.S., which relate to the brownfield property ownership clearance assistance program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. This program has never been capitalized and used for its intended purposes.

Section 7. This section provides an effective date of July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007	FY 2007-2008
General Revenue	($3 million)	($3 million)

2. Expenditures:

a. Non-recurring Effects:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

b. Recurring Effects: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

a. Non-recurring Effects:

None.

b. Recurring Effects:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the completion incentive cap from 10 percent to 25 percent. The amount of tax credit that may be granted to a tax credit applicant per year is increased from $250,000 to $500,000. These changes may result in increased participation in the Florida Brownfields Redevelopment Program and in voluntary cleanup of drycleaning solvent contaminated sites. Direct benefits may include employment opportunities for environmental cleanup contractors, future job opportunities for area residents, opportunity for developers to realize profits on property investments, the possibility of an increase in surrounding property value, and a reduction or elimination of risk to public health and the environment resulting from cleaning up contamination in the area.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Language concerning the additional 25 percent of total clean up costs eligible for tax credits during the final year of cleanup under sections 199.1055, 220.1845 and 376.30781(2), F.S., but not s. 376.3078(13), F.S., could be clarified.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to the redevelopment of brownfields;
3 amending ss. 199.1055, 220.1845, and 376.30781, F.S.;
4 increasing the amount and percentage of the credit that
5 may be applied against the intangible personal property
6 tax and the corporate income tax for the cost of voluntary
7 cleanup of a contaminated site; increasing the amount that
8 may be received by the taxpayer as an incentive to
9 complete the cleanup in the final year; increasing the
10 total amount of credits that may be granted in any year;
11 providing tax credits for voluntary cleanup activities
12 related to solid waste disposal facilities; providing
13 criteria for eligible sites and activities; directing the
14 Department of Environmental Protection to apply certain
15 criteria, requirements, and limitations for implementation
16 of such provisions; providing certain exceptions; amending
17 s. 288.9015, F.S.; requiring Enterprise Florida, Inc., to
18 aggressively market brownfields; amending s. 376.86, F.S.;
19 increasing the percentage of loans for redevelopment
20 projects in brownfield areas to which the state loan
21 guarantee applies under the Brownfield Areas Loan
22 Guarantee Program; repealing s. 376.87, F.S., relating to
23 the Brownfield Property Ownership Clearance Assistance;
24 repealing s. 376.875, F.S., relating to the Brownfield
25 Property Ownership Clearance Assistance Revolving Loan
26 Trust Fund; amending s. 14.2015, F.S.; deleting a
27 reference to the trust fund to conform; providing an
28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsection (1) of section 199.1055, Florida
33 Statutes, is amended to read:
34 199.1055 Contaminated site rehabilitation tax credit.--
35 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
36 (a) A credit in the amount of 50 ~~35~~ percent of the costs
37 of voluntary cleanup activity that is integral to site
38 rehabilitation at the following sites is available against any
39 tax due for a taxable year under s. 199.032, less any credit
40 allowed by former s. 220.68 for that year:
41 1. A drycleaning-solvent-contaminated site eligible for
42 state-funded site rehabilitation under s. 376.3078(3);
43 2. A drycleaning-solvent-contaminated site at which
44 cleanup is undertaken by the real property owner pursuant to s.
45 376.3078(11), if the real property owner is not also, and has
46 never been, the owner or operator of the drycleaning facility
47 where the contamination exists; or
48 3. A brownfield site in a designated brownfield area under
49 s. 376.80.
50 (b) A tax credit applicant, or multiple tax credit
51 applicants working jointly to clean up a single site, may not be
52 granted more than $500,000 ~~$250,000~~ per year in tax credits for
53 each site voluntarily rehabilitated. Multiple tax credit
54 applicants shall be granted tax credits in the same proportion
55 as their contribution to payment of cleanup costs. Subject to
56 the same conditions and limitations as provided in this section,

57 a municipality, county, or other tax credit applicant which
58 voluntarily rehabilitates a site may receive not more than
59 $500,000 ~~$250,000~~ per year in tax credits which it can
60 subsequently transfer subject to the provisions in paragraph
61 (g).
62 (c) If the credit granted under this section is not fully
63 used in any one year because of insufficient tax liability on
64 the part of the tax credit applicant, the unused amount may be
65 carried forward for a period not to exceed 5 years. Five years
66 after the date a credit is granted under this section, such
67 credit expires and may not be used. However, if during the 5-
68 year period the credit is transferred, in whole or in part,
69 pursuant to paragraph (g), each transferee has 5 years after the
70 date of transfer to use its credit.
71 (d) A taxpayer that receives a credit under s. 220.1845 is
72 ineligible to receive credit under this section in a given tax
73 year.
74 (e) A tax credit applicant that receives state-funded site
75 rehabilitation pursuant to s. 376.3078(3) for rehabilitation of
76 a drycleaning-solvent-contaminated site is ineligible to receive
77 credit under this section for costs incurred by the tax credit
78 applicant in conjunction with the rehabilitation of that site
79 during the same time period that state-administered site
80 rehabilitation was underway.
81 (f) The total amount of the tax credits which may be
82 granted under this section and s. 220.1845 is $5 ~~$2~~ million
83 annually.

84 (g)1. Tax credits that may be available under this section
85 to an entity eligible under s. 376.30781 may be transferred
86 after a merger or acquisition to the surviving or acquiring
87 entity and used in the same manner with the same limitations.
88 2. The entity or its surviving or acquiring entity as
89 described in subparagraph 1., may transfer any unused credit in
90 whole or in units of no less than 25 percent of the remaining
91 credit. The entity acquiring such credit may use it in the same
92 manner and with the same limitation as described in this
93 section. Such transferred credits may not be transferred again
94 although they may succeed to a surviving or acquiring entity
95 subject to the same conditions and limitations as described in
96 this section.
97 3. In the event the credit provided for under this section
98 is reduced either as a result of a determination by the
99 Department of Environmental Protection or an examination or
100 audit by the Department of Revenue, such tax deficiency shall be
101 recovered from the first entity, or the surviving or acquiring
102 entity, to have claimed such credit up to the amount of credit
103 taken. Any subsequent deficiencies shall be assessed against any
104 entity acquiring and claiming such credit, or in the case of
105 multiple succeeding entities in the order of credit succession.
106 (h) In order to encourage completion of site
107 rehabilitation at contaminated sites being voluntarily cleaned
108 up and eligible for a tax credit under this section, the tax
109 credit applicant may claim an additional 25 ~~10~~ percent of the
110 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
111 final year of cleanup as evidenced by the Department of

112 Environmental Protection issuing a "No Further Action" order for
113 that site.
114 Section 2. Subsection (1) of section 220.1845, Florida
115 Statutes, is amended to read:
116 220.1845 Contaminated site rehabilitation tax credit.--
117 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
118 (a) A credit in the amount of 50 ~~35~~ percent of the costs
119 of voluntary cleanup activity that is integral to site
120 rehabilitation at the following sites is available against any
121 tax due for a taxable year under this chapter:
122 1. A drycleaning-solvent-contaminated site eligible for
123 state-funded site rehabilitation under s. 376.3078(3);
124 2. A drycleaning-solvent-contaminated site at which
125 cleanup is undertaken by the real property owner pursuant to s.
126 376.3078(11), if the real property owner is not also, and has
127 never been, the owner or operator of the drycleaning facility
128 where the contamination exists; or
129 3. A brownfield site in a designated brownfield area under
130 s. 376.80.
131 (b) A tax credit applicant, or multiple tax credit
132 applicants working jointly to clean up a single site, may not be
133 granted more than $500,000 ~~$250,000~~ per year in tax credits for
134 each site voluntarily rehabilitated. Multiple tax credit
135 applicants shall be granted tax credits in the same proportion
136 as their contribution to payment of cleanup costs. Subject to
137 the same conditions and limitations as provided in this section,
138 a municipality, county, or other tax credit applicant which
139 voluntarily rehabilitates a site may receive not more than

140 $500,000 ~~$250,000~~ per year in tax credits which it can
141 subsequently transfer subject to the provisions in paragraph
142 (h).
143 (c) If the credit granted under this section is not fully
144 used in any one year because of insufficient tax liability on
145 the part of the corporation, the unused amount may be carried
146 forward for a period not to exceed 5 years. The carryover credit
147 may be used in a subsequent year when the tax imposed by this
148 chapter for that year exceeds the credit for which the
149 corporation is eligible in that year under this section after
150 applying the other credits and unused carryovers in the order
151 provided by s. 220.02(8). Five years after the date a credit is
152 granted under this section, such credit expires and may not be
153 used. However, if during the 5-year period the credit is
154 transferred, in whole or in part, pursuant to paragraph (h),
155 each transferee has 5 years after the date of transfer to use
156 its credit.
157 (d) A taxpayer that files a consolidated return in this
158 state as a member of an affiliated group under s. 220.131(1) may
159 be allowed the credit on a consolidated return basis up to the
160 amount of tax imposed upon the consolidated group.
161 (e) A taxpayer that receives credit under s. 199.1055 is
162 ineligible to receive credit under this section in a given tax
163 year.
164 (f) A tax credit applicant that receives state-funded site
165 rehabilitation under s. 376.3078(3) for rehabilitation of a
166 drycleaning-solvent-contaminated site is ineligible to receive
167 credit under this section for costs incurred by the tax credit

168 applicant in conjunction with the rehabilitation of that site
169 during the same time period that state-administered site
170 rehabilitation was underway.
171 (g) The total amount of the tax credits which may be
172 granted under this section and s. 199.1055 is $5 ~~$2~~ million
173 annually.
174 (h)1. Tax credits that may be available under this section
175 to an entity eligible under s. 376.30781 may be transferred
176 after a merger or acquisition to the surviving or acquiring
177 entity and used in the same manner and with the same
178 limitations.
179 2. The entity or its surviving or acquiring entity as
180 described in subparagraph 1., may transfer any unused credit in
181 whole or in units of no less than 25 percent of the remaining
182 credit. The entity acquiring such credit may use it in the same
183 manner and with the same limitation as described in this
184 section. Such transferred credits may not be transferred again
185 although they may succeed to a surviving or acquiring entity
186 subject to the same conditions and limitations as described in
187 this section.
188 3. In the event the credit provided for under this section
189 is reduced either as a result of a determination by the
190 Department of Environmental Protection or an examination or
191 audit by the Department of Revenue, such tax deficiency shall be
192 recovered from the first entity, or the surviving or acquiring
193 entity, to have claimed such credit up to the amount of credit
194 taken. Any subsequent deficiencies shall be assessed against any

195 entity acquiring and claiming such credit, or in the case of
196 multiple succeeding entities in the order of credit succession.
197 (i) In order to encourage completion of site
198 rehabilitation at contaminated sites being voluntarily cleaned
199 up and eligible for a tax credit under this section, the tax
200 credit applicant may claim an additional 25 ~~10~~ percent of the
201 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
202 final year of cleanup as evidenced by the Department of
203 Environmental Protection issuing a "No Further Action" order for
204 that site.
205 Section 3. Section 376.30781, Florida Statutes, is amended
206 to read:
207 376.30781 Partial tax credits for rehabilitation of
208 drycleaning-solvent-contaminated sites and brownfield sites in
209 designated brownfield areas; application process; rulemaking
210 authority; revocation authority.--
211 (1) The Legislature finds that:
212 (a) To facilitate property transactions and economic
213 growth and development, it is in the interest of the state to
214 encourage the cleanup, at the earliest possible time, of
215 drycleaning-solvent-contaminated sites and brownfield sites in
216 designated brownfield areas.
217 (b) It is the intent of the Legislature to encourage the
218 voluntary cleanup of drycleaning-solvent-contaminated sites and
219 brownfield sites in designated brownfield areas by providing a
220 partial tax credit for the restoration of such property in
221 specified circumstances.

222 (2)(a) A credit in the amount of 50 ~~35~~ percent of the
223 costs of voluntary cleanup activity that is integral to site
224 rehabilitation at the following sites is allowed pursuant to ss.
225 199.1055 and 220.1845:
226 1. A drycleaning-solvent-contaminated site eligible for
227 state-funded site rehabilitation under s. 376.3078(3);
228 2. A drycleaning-solvent-contaminated site at which
229 cleanup is undertaken by the real property owner pursuant to s.
230 376.3078(11), if the real property owner is not also, and has
231 never been, the owner or operator of the drycleaning facility
232 where the contamination exists; or
233 3. A brownfield site in a designated brownfield area under
234 s. 376.80.
235 (b) A tax credit applicant, or multiple tax credit
236 applicants working jointly to clean up a single site, may not be
237 granted more than $500,000 ~~$250,000~~ per year in tax credits for
238 each site voluntarily rehabilitated. Multiple tax credit
239 applicants shall be granted tax credits in the same proportion
240 as their contribution to payment of cleanup costs. Tax credits
241 are available only for site rehabilitation conducted during the
242 calendar year for which the tax credit application is submitted.
243 (c) In order to encourage completion of site
244 rehabilitation at contaminated sites that are being voluntarily
245 cleaned up and that are eligible for a tax credit under this
246 section, the tax credit applicant may claim an additional 25 ~~10~~
247 percent of the total cleanup costs, not to exceed $500,000
248 ~~$50,000~~, in the final year of cleanup as evidenced by the

249 Department of Environmental Protection issuing a "No Further
250 Action" order for that site.
251 (3) The Department of Environmental Protection shall be
252 responsible for allocating the tax credits provided for in ss.
253 199.1055 and 220.1845, not to exceed a total of $5 ~~$2~~ million in
254 tax credits annually.
255 (4) To claim the credit for site rehabilitation conducted
256 during the current calendar year, each tax credit applicant must
257 apply to the Department of Environmental Protection for an
258 allocation of the $5 ~~$2~~ million annual credit by January 15 of
259 the following year on a form developed by the Department of
260 Environmental Protection in cooperation with the Department of
261 Revenue. The form shall include an affidavit from each tax
262 credit applicant certifying that all information contained in
263 the application, including all records of costs incurred and
264 claimed in the tax credit application, are true and correct. If
265 the application is submitted pursuant to subparagraph (2)(a)2.,
266 the form must include an affidavit signed by the real property
267 owner stating that it is not, and has never been, the owner or
268 operator of the drycleaning facility where the contamination
269 exists. Approval of partial tax credits must be accomplished on
270 a first-come, first-served basis based upon the date complete
271 applications are received by the Division of Waste Management. A
272 tax credit applicant shall submit only one complete application
273 per site for each calendar year's site rehabilitation costs.
274 Incomplete placeholder applications shall not be accepted and
275 will not secure a place in the first-come, first-served

276 application line. To be eligible for a tax credit, the tax
277 credit applicant must:
278 (a) Have entered into a voluntary cleanup agreement with
279 the Department of Environmental Protection for a drycleaning-
280 solvent-contaminated site or a Brownfield Site Rehabilitation
281 Agreement, as applicable; and
282 (b) Have paid all deductibles pursuant to s.
283 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
284 sites.
285 (5) To obtain the tax credit certificate, a tax credit
286 applicant must annually file an application for certification,
287 which must be received by the Division of Waste Management of
288 the Department of Environmental Protection by January 15 of the
289 year following the calendar year for which site rehabilitation
290 costs are being claimed in a tax credit application. The tax
291 credit applicant must provide all pertinent information
292 requested on the tax credit application form, including, at a
293 minimum, the name and address of the tax credit applicant and
294 the address and tracking identification number of the eligible
295 site. Along with the tax credit application form, the tax credit
296 applicant must submit the following:
297 (a) A nonrefundable review fee of $250 made payable to the
298 Water Quality Assurance Trust Fund to cover the administrative
299 costs associated with the department's review of the tax credit
300 application;
301 (b) Copies of contracts and documentation of contract
302 negotiations, accounts, invoices, sales tickets, or other
303 payment records from purchases, sales, leases, or other

304 transactions involving actual costs incurred for that tax year
305 related to site rehabilitation, as that term is defined in ss.
306 376.301 and 376.79;
307 (c) Proof that the documentation submitted pursuant to
308 paragraph (b) has been reviewed and verified by an independent
309 certified public accountant in accordance with standards
310 established by the American Institute of Certified Public
311 Accountants. Specifically, the certified public accountant must
312 attest to the accuracy and validity of the costs incurred and
313 paid by conducting an independent review of the data presented
314 by the tax credit applicant. Accuracy and validity of costs
315 incurred and paid would be determined once the level of effort
316 was certified by an appropriate professional registered in this
317 state in each contributing technical discipline. The certified
318 public accountant's report would also attest that the costs
319 included in the application form are not duplicated within the
320 application. A copy of the accountant's report shall be
321 submitted to the Department of Environmental Protection with the
322 tax credit application; and
323 (d) A certification form stating that site rehabilitation
324 activities associated with the documentation submitted pursuant
325 to paragraph (b) have been conducted under the observation of,
326 and related technical documents have been signed and sealed by,
327 an appropriate professional registered in this state in each
328 contributing technical discipline. The certification form shall
329 be signed and sealed by the appropriate registered professionals
330 stating that the costs incurred were integral, necessary, and

331 required for site rehabilitation, as that term is defined in ss.
332 376.301 and 376.79.
333 (6) The certified public accountant and appropriate
334 registered professionals submitting forms as part of a tax
335 credit application must verify such forms. Verification must be
336 accomplished as provided in s. 92.525(1)(b) and subject to the
337 provisions of s. 92.525(3).
338 (7) The Department of Environmental Protection shall
339 review the tax credit application and any supplemental
340 documentation that the tax credit applicant may submit prior to
341 the annual application deadline in order to have the application
342 considered complete, for the purpose of verifying that the tax
343 credit applicant has met the qualifying criteria in subsections
344 (2) and (4) and has submitted all required documentation listed
345 in subsection (5). Upon verification that the tax credit
346 applicant has met these requirements, the department shall issue
347 a written decision granting eligibility for partial tax credits
348 (a tax credit certificate) in the amount of 50 ~~35~~ percent of the
349 total costs claimed, subject to the $500,000 ~~$250,000~~
350 limitation, for the calendar year for which the tax credit
351 application is submitted based on the report of the certified
352 public accountant and the certifications from the appropriate
353 registered technical professionals.
354 (8) On or before March 1, the Department of Environmental
355 Protection shall inform each eligible tax credit applicant of
356 the amount of its partial tax credit and provide each eligible
357 tax credit applicant with a tax credit certificate that must be
358 submitted with its tax return to the Department of Revenue to

359 claim the tax credit or be transferred pursuant to s.
360 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
361 the payment of refunds if total credits exceed the amount of tax
362 owed.
363 (9) If a tax credit applicant does not receive a tax
364 credit allocation due to an exhaustion of the $5 ~~$2~~ million
365 annual tax credit authorization, such application will then be
366 included in the same first-come, first-served order in the next
367 year's annual tax credit allocation, if any, based on the prior
368 year application.
369 (10) The Department of Environmental Protection may adopt
370 rules to prescribe the necessary forms required to claim tax
371 credits under this section and to provide the administrative
372 guidelines and procedures required to administer this section.
373 (11) The Department of Environmental Protection may revoke
374 or modify any written decision granting eligibility for partial
375 tax credits under this section if it is discovered that the tax
376 credit applicant submitted any false statement, representation,
377 or certification in any application, record, report, plan, or
378 other document filed in an attempt to receive partial tax
379 credits under this section. The Department of Environmental
380 Protection shall immediately notify the Department of Revenue of
381 any revoked or modified orders affecting previously granted
382 partial tax credits. Additionally, the tax credit applicant must
383 notify the Department of Revenue of any change in its tax credit
384 claimed.
385 (12) A tax credit applicant who receives state-funded site
386 rehabilitation under s. 376.3078(3) for rehabilitation of a

387 drycleaning-solvent-contaminated site is ineligible to receive a
388 tax credit under s. 199.1055 or s. 220.1845 for costs incurred
389 by the tax credit applicant in conjunction with the
390 rehabilitation of that site during the same time period that
391 state-administered site rehabilitation was underway.
392 (13) At eligible sites listed in paragraph (2)(a), in
393 addition to any tax credits that may be claimed for site
394 rehabilitation as defined in s. 376.301, a tax credit applicant
395 may also claim tax credits pursuant to the requirements of this
396 section for voluntary cleanup activity that addresses a solid
397 waste disposal facility, subject to the following criteria:
398 (a) For purposes of this subsection, "solid waste" and
399 "solid waste disposal facility" have the same meanings as
400 defined in s. 403.703, but shall not include sites that merely
401 have litter or debris scattered on the surface of the land;
402 (b) The solid waste disposal facility must have ceased
403 operation prior to 1988 and must not have been or must not
404 currently be subject to any department solid waste permit;
405 (c) Tax credits may be claimed for one or more of the
406 following activities:
407 1. Removing all solid waste from the solid waste disposal
408 facility and disposing of it in a permitted solid waste
409 management facility;
410 2. Closing the solid waste disposal facility, which may
411 include partial removal and disposal of solid waste in a
412 permitted solid waste management facility, in accordance with
413 the requirements of chapter 62-701, Florida Administrative Code,
414 including grading the facility to achieve appropriate side

415 slopes, installing final cover, controlling stormwater, and
416 providing gas management, if necessary;
417 3. Performing long-term care for the solid waste disposal
418 facility in accordance with the requirements of chapter 62-701,
419 Florida Administrative Code, after the facility has been
420 properly closed; and
421 4. Performing groundwater evaluation and assessment after
422 removal of all solid waste or after the solid waste disposal
423 facility has been properly closed;
424 (d) If the solid waste disposal facility is closed as
425 described in subparagraph (c)2., the redevelopment of the
426 property containing the solid waste disposal facility shall be
427 limited to commercial or industrial land use only and shall be
428 subject to appropriate engineering and institutional controls,
429 and tax credits shall be awarded only after a restrictive
430 covenant limiting future uses of the property has been reviewed
431 and approved by the department and properly recorded;
432 (e) Costs for crushing or compacting the solid waste in
433 place solely to make it suitable for future development shall
434 not be eligible for tax credits pursuant to this section; and
435 (f) Any activity conducted in accordance with this
436 subsection shall not be considered site rehabilitation.
437 (14) In implementing subsection (13), the department shall
438 use the same criteria, requirements, and limitations detailed in
439 subsections (1)-(12) of this section and ss. 199.1055 and
440 220.1845, with the following exceptions:
441 (a) Where reference is made to "site rehabilitation," the
442 department shall consider whether the costs claimed are for

443 voluntary cleanup activity that addresses a solid waste disposal
444 facility as outlined in subsection (13);
445 (b) In lieu of the certification requirements of paragraph
446 (5)(d), a tax credit applicant seeking a tax credit pursuant to
447 subsection (13) shall include in the tax credit application:
448 1. A certification that the applicant has determined,
449 after consultation with local government officials and the
450 department, that the solid waste disposal facility ceased
451 operating prior to January 1, 1974, and is not or has never been
452 subject to a solid waste permit;
453 2. A certification signed and sealed by an appropriate
454 registered professional and previously approved by the
455 department that the solid waste disposal facility has been
456 properly closed pursuant to chapter 62-701, Florida
457 Administrative Code, or that all solid waste was removed and
458 properly disposed of; and
459 3. A certification signed and sealed by an appropriate
460 registered professional that costs incurred and claimed in the
461 tax credit application were integral, necessary, and required to
462 conduct those activities listed in paragraph (13)(c), as
463 applicable;
464 (c) Tax credit applications in which costs are claimed
465 pursuant to subparagraphs (13)(c)1. and 2. shall not be subject
466 to the calendar-year limitation and January 15 annual
467 application deadline, but the department shall accept a one-time
468 application filed after the tax credit applicant has completed
469 all requirements listed in subsection (13) and this subsection;

470 (d) Notwithstanding the tax credit percentage established
471 in subsections (2) and (7) and ss. 199.1055 and 220.1845, the
472 tax credit for activities conducted pursuant to subparagraphs
473 (13)(c)2.-4. relating to closure of a solid waste disposal
474 facility shall be limited to 25 percent;
475 (e) The additional percentage allowed by paragraph (2)(c)
476 and ss. 199.1055(1)(h) and 220.1845(1)(i) is not applicable to
477 tax credits claimed pursuant to subsection (13); and
478 (f) The department shall have 60 days after the date of
479 receipt of any application claiming tax credits pursuant to
480 subsection (13) to process the application and grant or deny the
481 claimed tax credits.
482 Section 4. Subsection (2) of section 288.9015, Florida
483 Statutes, is amended to read:
484 288.9015 Enterprise Florida, Inc.; purpose; duties.--
485 (2) It shall be the responsibility of Enterprise Florida,
486 Inc., to aggressively market Florida's rural communities,
487 distressed urban communities, brownfields, and enterprise zones
488 as locations for potential new investment, to aggressively
489 assist in the retention and expansion of existing businesses in
490 these communities, and to aggressively assist these communities
491 in the identification and development of new economic
492 development opportunities for job creation, fully marketing
493 state incentive programs such as the Qualified Target Industry
494 Tax Refund Program under s. 288.106 and the Quick Action Closing
495 Fund under s. 288.1088 in economically distressed areas.
496 Section 5. Subsection (1) of section 376.86, Florida
497 Statutes, is amended to read:

498 376.86 Brownfield Areas Loan Guarantee Program.--
499 (1) The Brownfield Areas Loan Guarantee Council is created
500 to review and approve or deny by a majority vote of its
501 membership, the situations and circumstances for participation
502 in partnerships by agreements with local governments, financial
503 institutions, and others associated with the redevelopment of
504 brownfield areas pursuant to the Brownfields Redevelopment Act
505 for a limited state guaranty of up to 5 years of loan guarantees
506 or loan loss reserves issued pursuant to law. The limited state
507 loan guaranty applies only to 25 ~~10~~ percent of the primary
508 lenders loans for redevelopment projects in brownfield areas. A
509 limited state guaranty of private loans or a loan loss reserve
510 is authorized for lenders licensed to operate in the state upon
511 a determination by the council that such an arrangement would be
512 in the public interest and the likelihood of the success of the
513 loan is great.
514 Section 6. Sections 376.87 and 376.875, Florida Statutes,
515 are repealed.
516 Section 7. Paragraph (f) of subsection (2) of section
517 14.2015, Florida Statutes, is amended to read:
518 14.2015 Office of Tourism, Trade, and Economic
519 Development; creation; powers and duties.--
520 (2) The purpose of the Office of Tourism, Trade, and
521 Economic Development is to assist the Governor in working with
522 the Legislature, state agencies, business leaders, and economic
523 development professionals to formulate and implement coherent
524 and consistent policies and strategies designed to provide
525 economic opportunities for all Floridians. To accomplish such

526 purposes, the Office of Tourism, Trade, and Economic Development
527 shall:
528 (f)1. Administer the Florida Enterprise Zone Act under ss.
529 290.001-290.016, the community contribution tax credit program
530 under ss. 220.183 and 624.5105, the tax refund program for
531 qualified target industry businesses under s. 288.106, the tax-
532 refund program for qualified defense contractors under s.
533 288.1045, contracts for transportation projects under s.
534 288.063, the sports franchise facility program under s.
535 288.1162, the professional golf hall of fame facility program
536 under s. 288.1168, the expedited permitting process under s.
537 403.973, the Rural Community Development Revolving Loan Fund
538 under s. 288.065, the Regional Rural Development Grants Program
539 under s. 288.018, the Certified Capital Company Act under s.
540 288.99, the Florida State Rural Development Council, the Rural
541 Economic Development Initiative, and other programs that are
542 specifically assigned to the office by law, by the
543 appropriations process, or by the Governor. Notwithstanding any
544 other provisions of law, the office may expend interest earned
545 from the investment of program funds deposited in the Grants and
546 Donations Trust Fund ~~and the Brownfield Property Ownership~~
547 ~~Clearance Assistance Revolving Loan Trust Fund~~ to contract for
548 the administration of the programs, or portions of the programs,
549 enumerated in this paragraph or assigned to the office by law,
550 by the appropriations process, or by the Governor. Such
551 expenditures shall be subject to review under chapter 216.
552 2. The office may enter into contracts in connection with
553 the fulfillment of its duties concerning the Florida First

554 Business Bond Pool under chapter 159, tax incentives under
555 chapters 212 and 220, tax incentives under the Certified Capital
556 Company Act in chapter 288, foreign offices under chapter 288,
557 the Enterprise Zone program under chapter 290, the Seaport
558 Employment Training program under chapter 311, the Florida
559 Professional Sports Team License Plates under chapter 320,
560 Spaceport Florida under chapter 331, Expedited Permitting under
561 chapter 403, and in carrying out other functions that are
562 specifically assigned to the office by law, by the
563 appropriations process, or by the Governor.
564 Section 8. This act shall take effect July 1, 2006.

Bill No. **HB 7131 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative(s) Peterman offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 199.1055, Florida Statutes, is amended
7 to read:
8 199.1055 Contaminated site rehabilitation tax credit.--
9 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
10 (a) A credit in the amount of 50 ~~35~~ percent of the costs
11 of voluntary cleanup activity that is integral to site
12 rehabilitation at the following sites is available against any
13 tax due for a taxable year under s. 199.032, less any credit
14 allowed by former s. 220.68 for that year:
15 1. A drycleaning-solvent-contaminated site eligible for
16 state-funded site rehabilitation under s. 376.3078(3);
17 2. A drycleaning-solvent-contaminated site at which
18 cleanup is undertaken by the real property owner pursuant to s.
19 376.3078(11), if the real property owner is not also, and has
20 never been, the owner or operator of the drycleaning facility
21 where the contamination exists; or

22 3. A brownfield site in a designated brownfield area under
23 s. 376.80.
24 (b) A tax credit applicant, or multiple tax credit
25 applicants working jointly to clean up a single site, may not be
26 granted more than $500,000 ~~$250,000~~ per year in tax credits for
27 each site voluntarily rehabilitated. Multiple tax credit
28 applicants shall be granted tax credits in the same proportion
29 as their contribution to payment of cleanup costs. Subject to
30 the same conditions and limitations as provided in this section,
31 a municipality, county, or other tax credit applicant which
32 voluntarily rehabilitates a site may receive not more than
33 $500,000 ~~$250,000~~ per year in tax credits which it can
34 subsequently transfer subject to the provisions in paragraph
35 (g).
36 (c) If the credit granted under this section is not fully
37 used in any one year because of insufficient tax liability on
38 the part of the tax credit applicant, the unused amount may be
39 carried forward for a period not to exceed 5 years. Five years
40 after the date a credit is granted under this section, such
41 credit expires and may not be used. However, if during the 5-
42 year period the credit is transferred, in whole or in part,
43 pursuant to paragraph (g), each transferee has 5 years after the
44 date of transfer to use its credit.
45 (d) A taxpayer that receives a credit under s. 220.1845 is
46 ineligible to receive credit under this section in a given tax
47 year.
48 (e) A tax credit applicant that receives state-funded site
49 rehabilitation pursuant to s. 376.3078(3) for rehabilitation of
50 a drycleaning-solvent-contaminated site is ineligible to receive
51 credit under this section for costs incurred by the tax credit
52 applicant in conjunction with the rehabilitation of that site

53 during the same time period that state-administered site
54 rehabilitation was underway.
55 (f) The total amount of the tax credits which may be
56 granted under this section and s. 220.1845 is $5 ~~$2~~ million
57 annually.
58 (g)1. Tax credits that may be available under this section
59 to an entity eligible under s. 376.30781 may be transferred
60 after a merger or acquisition to the surviving or acquiring
61 entity and used in the same manner with the same limitations.
62 2. The entity or its surviving or acquiring entity as
63 described in subparagraph 1., may transfer any unused credit in
64 whole or in units of no less than 25 percent of the remaining
65 credit. The entity acquiring such credit may use it in the same
66 manner and with the same limitation as described in this
67 section. Such transferred credits may not be transferred again
68 although they may succeed to a surviving or acquiring entity
69 subject to the same conditions and limitations as described in
70 this section.
71 3. In the event the credit provided for under this section
72 is reduced either as a result of a determination by the
73 Department of Environmental Protection or an examination or
74 audit by the Department of Revenue, such tax deficiency shall be
75 recovered from the first entity, or the surviving or acquiring
76 entity, to have claimed such credit up to the amount of credit
77 taken. Any subsequent deficiencies shall be assessed against any
78 entity acquiring and claiming such credit, or in the case of
79 multiple succeeding entities in the order of credit succession.
80 (h) In order to encourage completion of site
81 rehabilitation at contaminated sites being voluntarily cleaned
82 up and eligible for a tax credit under this section, the tax
83 credit applicant may claim an additional 25 ~~10~~ percent of the

84 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
85 final year of cleanup as evidenced by the Department of
86 Environmental Protection issuing a "No Further Action" order for
87 that site.
88 (i) In order to encourage the construction of housing that
89 meets the definition of affordable provided in s. 420.0004(3),
90 an applicant for the tax credit may claim an additional 25
91 percent of the total site-rehabilitation costs that are eligible
92 for tax credits under this section, not to exceed $500,000. In
93 order to receive this additional tax credit, the applicant must
94 provide a certification letter from the Florida Housing Finance
95 Corporation, the local housing authority, or other governmental
96 agency that is a party to the use agreement, indicating that the
97 construction on the brownfield site is complete, the brownfield
98 site has received a certificate of occupancy, and the brownfield
99 site has a properly recorded instrument that limits the use of
100 the property to housing that meets the definition of affordable
101 provided in s. 420.0004(3).
102 (2) FILING REQUIREMENTS.--Any taxpayer that wishes to
103 obtain credit under this section must submit with its return a
104 tax credit certificate approving partial tax credits issued by
105 the Department of Environmental Protection under s. 376.30781.
106 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
107 FORFEITURE.--
108 (a) The Department of Revenue may adopt rules to prescribe
109 any necessary forms required to claim a tax credit under this
110 section and to provide the administrative guidelines and
111 procedures required to administer this section.
112 (b) In addition to its existing audit and investigation
113 authority relating to chapters 199 and 220, the Department of
114 Revenue may perform any additional financial and technical

115 audits and investigations, including examining the accounts,
116 books, or records of the tax credit applicant, which are
117 necessary to verify the site rehabilitation costs included in a
118 tax credit return and to ensure compliance with this section.
119 The Department of Environmental Protection shall provide
120 technical assistance, when requested by the Department of
121 Revenue, on any technical audits performed under this section.
122 (c) It is grounds for forfeiture of previously claimed and
123 received tax credits if the Department of Revenue determines, as
124 a result of either an audit or information received from the
125 Department of Environmental Protection, that a taxpayer received
126 tax credits under this section to which the taxpayer was not
127 entitled. In the case of fraud, the taxpayer shall be prohibited
128 from claiming any future tax credits under this section or s.
129 220.1845.
130 1. The taxpayer is responsible for returning forfeited tax
131 credits to the Department of Revenue, and such funds shall be
132 paid into the General Revenue Fund of the state.
133 2. The taxpayer shall file with the Department of Revenue
134 an amended tax return or such other report as the Department of
135 Revenue prescribes by rule and shall pay any required tax within
136 60 days after the taxpayer receives notification from the
137 Department of Environmental Protection pursuant to s. 376.30781
138 that previously approved tax credits have been revoked or
139 modified, if uncontested, or within 60 days after a final order
140 is issued following proceedings involving a contested revocation
141 or modification order.
142 3. A notice of deficiency may be issued by the Department
143 of Revenue at any time within 5 years after the date the
144 taxpayer receives notification from the Department of
145 Environmental Protection pursuant to s. 376.30781 that

146 previously approved tax credits have been revoked or modified.
147 If a taxpayer fails to notify the Department of Revenue of any
148 change in its tax credit claimed, a notice of deficiency may be
149 issued at any time. In either case, the amount of any proposed
150 assessment set forth in such notice of deficiency shall be
151 limited to the amount of any deficiency resulting under this
152 section from the recomputation of the taxpayer's tax for the
153 taxable year.
154 4. Any taxpayer that fails to report and timely pay any
155 tax due as a result of the forfeiture of its tax credit is in
156 violation of this section and is subject to applicable penalty
157 and interest.
158 Section 2. Section 220.1845, Florida Statutes, is amended
159 to read:
160 220.1845 Contaminated site rehabilitation tax credit.--
161 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
162 (a) A credit in the amount of 50 ~~35~~ percent of the costs
163 of voluntary cleanup activity that is integral to site
164 rehabilitation at the following sites is available against any
165 tax due for a taxable year under this chapter:
166 1. A drycleaning-solvent-contaminated site eligible for
167 state-funded site rehabilitation under s. 376.3078(3);
168 2. A drycleaning-solvent-contaminated site at which
169 cleanup is undertaken by the real property owner pursuant to s.
170 376.3078(11), if the real property owner is not also, and has
171 never been, the owner or operator of the drycleaning facility
172 where the contamination exists; or
173 3. A brownfield site in a designated brownfield area under
174 s. 376.80.
175 (b) A tax credit applicant, or multiple tax credit
176 applicants working jointly to clean up a single site, may not be

177 granted more than $500,000 ~~$250,000~~ per year in tax credits for
178 each site voluntarily rehabilitated. Multiple tax credit
179 applicants shall be granted tax credits in the same proportion
180 as their contribution to payment of cleanup costs. Subject to
181 the same conditions and limitations as provided in this section,
182 a municipality, county, or other tax credit applicant which
183 voluntarily rehabilitates a site may receive not more than
184 $500,000 ~~$250,000~~ per year in tax credits which it can
185 subsequently transfer subject to the provisions in paragraph
186 (h).

187 (c) If the credit granted under this section is not fully
188 used in any one year because of insufficient tax liability on
189 the part of the corporation, the unused amount may be carried
190 forward for a period not to exceed 5 years. The carryover credit
191 may be used in a subsequent year when the tax imposed by this
192 chapter for that year exceeds the credit for which the
193 corporation is eligible in that year under this section after
194 applying the other credits and unused carryovers in the order
195 provided by s. 220.02(8). Five years after the date a credit is
196 granted under this section, such credit expires and may not be
197 used. However, if during the 5-year period the credit is
198 transferred, in whole or in part, pursuant to paragraph (h),
199 each transferee has 5 years after the date of transfer to use
200 its credit.

201 (d) A taxpayer that files a consolidated return in this
202 state as a member of an affiliated group under s. 220.131(1) may
203 be allowed the credit on a consolidated return basis up to the
204 amount of tax imposed upon the consolidated group.

205 (e) A taxpayer that receives credit under s. 199.1055 is
206 ineligible to receive credit under this section in a given tax
207 year.

208 (f) A tax credit applicant that receives state-funded site
209 rehabilitation under s. 376.3078(3) for rehabilitation of a
210 drycleaning-solvent-contaminated site is ineligible to receive
211 credit under this section for costs incurred by the tax credit
212 applicant in conjunction with the rehabilitation of that site
213 during the same time period that state-administered site
214 rehabilitation was underway.
215 (g) The total amount of the tax credits which may be
216 granted under this section and s. 199.1055 is $5 ~~$2~~ million
217 annually.
218 (h)1. Tax credits that may be available under this section
219 to an entity eligible under s. 376.30781 may be transferred
220 after a merger or acquisition to the surviving or acquiring
221 entity and used in the same manner and with the same
222 limitations.
223 2. The entity or its surviving or acquiring entity as
224 described in subparagraph 1., may transfer any unused credit in
225 whole or in units of no less than 25 percent of the remaining
226 credit. The entity acquiring such credit may use it in the same
227 manner and with the same limitation as described in this
228 section. Such transferred credits may not be transferred again
229 although they may succeed to a surviving or acquiring entity
230 subject to the same conditions and limitations as described in
231 this section.
232 3. In the event the credit provided for under this section
233 is reduced either as a result of a determination by the
234 Department of Environmental Protection or an examination or
235 audit by the Department of Revenue, such tax deficiency shall be
236 recovered from the first entity, or the surviving or acquiring
237 entity, to have claimed such credit up to the amount of credit
238 taken. Any subsequent deficiencies shall be assessed against any

239 entity acquiring and claiming such credit, or in the case of
240 multiple succeeding entities in the order of credit succession.
241 (i) In order to encourage completion of site
242 rehabilitation at contaminated sites being voluntarily cleaned
243 up and eligible for a tax credit under this section, the tax
244 credit applicant may claim an additional 25 ~~10~~ percent of the
245 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
246 final year of cleanup as evidenced by the Department of
247 Environmental Protection issuing a "No Further Action" order for
248 that site.
249 (j) In order to encourage the construction of housing that
250 meets the definition of affordable provided in s. 420.0004(3),
251 an applicant for the tax credit may claim an additional 25
252 percent of the total site-rehabilitation costs that are eligible
253 for tax credits under this section, not to exceed $500,000. In
254 order to receive this additional tax credit, the applicant must
255 provide a certification letter from the Florida Housing Finance
256 Corporation, the local housing authority, or other governmental
257 agency that is a party to the use agreement, indicating that the
258 construction on the brownfield site is complete, the brownfield
259 site has received a certificate of occupancy, and the brownfield
260 site has a properly recorded instrument that limits the use of
261 the property to housing that meets the definition of affordable
262 provided in s. 420.0004(3).
263 (2) FILING REQUIREMENTS.--Any corporation that wishes to
264 obtain credit under this section must submit with its return a
265 tax credit certificate approving partial tax credits issued by
266 the Department of Environmental Protection under s. 376.30781.
267 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
268 FORFEITURE.--

269 (a) The Department of Revenue may adopt rules to prescribe
270 any necessary forms required to claim a tax credit under this
271 section and to provide the administrative guidelines and
272 procedures required to administer this section.
273 (b) In addition to its existing audit and investigation
274 authority relating to chapter 199 and this chapter, the
275 Department of Revenue may perform any additional financial and
276 technical audits and investigations, including examining the
277 accounts, books, or records of the tax credit applicant, which
278 are necessary to verify the site rehabilitation costs included
279 in a tax credit return and to ensure compliance with this
280 section. The Department of Environmental Protection shall
281 provide technical assistance, when requested by the Department
282 of Revenue, on any technical audits performed pursuant to this
283 section.
284 (c) It is grounds for forfeiture of previously claimed and
285 received tax credits if the Department of Revenue determines, as
286 a result of either an audit or information received from the
287 Department of Environmental Protection, that a taxpayer received
288 tax credits pursuant to this section to which the taxpayer was
289 not entitled. In the case of fraud, the taxpayer shall be
290 prohibited from claiming any future tax credits under this
291 section or s. 199.1055.
292 1. The taxpayer is responsible for returning forfeited tax
293 credits to the Department of Revenue, and such funds shall be
294 paid into the General Revenue Fund of the state.
295 2. The taxpayer shall file with the Department of Revenue
296 an amended tax return or such other report as the Department of
297 Revenue prescribes by rule and shall pay any required tax within
298 60 days after the taxpayer receives notification from the
299 Department of Environmental Protection pursuant to s. 376.30781

300 that previously approved tax credits have been revoked or
301 modified, if uncontested, or within 60 days after a final order
302 is issued following proceedings involving a contested revocation
303 or modification order.
304 3. A notice of deficiency may be issued by the Department
305 of Revenue at any time within 5 years after the date the
306 taxpayer receives notification from the Department of
307 Environmental Protection pursuant to s. 376.30781 that
308 previously approved tax credits have been revoked or modified.
309 If a taxpayer fails to notify the Department of Revenue of any
310 change in its tax credit claimed, a notice of deficiency may be
311 issued at any time. In either case, the amount of any proposed
312 assessment set forth in such notice of deficiency shall be
313 limited to the amount of any deficiency resulting under this
314 section from the recomputation of the taxpayer's tax for the
315 taxable year.
316 4. Any taxpayer that fails to report and timely pay any
317 tax due as a result of the forfeiture of its tax credit is in
318 violation of this section and is subject to applicable penalty
319 and interest.
320 Section 3. Section 376.30781, Florida Statutes, is amended
321 to read:
322 376.30781 Partial tax credits for rehabilitation of
323 drycleaning-solvent-contaminated sites and brownfield sites in
324 designated brownfield areas; application process; rulemaking
325 authority; revocation authority.--
326 (1) The Legislature finds that:
327 (a) To facilitate property transactions and economic
328 growth and development, it is in the interest of the state to
329 encourage the cleanup, at the earliest possible time, of

330 drycleaning-solvent-contaminated sites and brownfield sites in
331 designated brownfield areas.
332 (b) It is the intent of the Legislature to encourage the
333 voluntary cleanup of drycleaning-solvent-contaminated sites and
334 brownfield sites in designated brownfield areas by providing a
335 partial tax credit for the restoration of such property in
336 specified circumstances.
337 (2) Notwithstanding the requirements of subsection (5),
338 tax credits allowed pursuant to ss. 199.1055 and 220.1845 are
339 available for any site rehabilitation conducted during the
340 calendar year in which the applicable voluntary cleanup
341 agreement or brownfield site rehabilitation agreement is
342 executed, even if the site rehabilitation is conducted prior to
343 the execution of that agreement or the designation of the
344 brownfield area.
345 (3) ~~(2)~~(a) A credit in the amount of 50 ~~35~~ percent of the
346 costs of voluntary cleanup activity that is integral to site
347 rehabilitation at the following sites is allowed pursuant to ss.
348 199.1055 and 220.1845:
349 1. A drycleaning-solvent-contaminated site eligible for
350 state-funded site rehabilitation under s. 376.3078(3);
351 2. A drycleaning-solvent-contaminated site at which
352 cleanup is undertaken by the real property owner pursuant to s.
353 376.3078(11), if the real property owner is not also, and has
354 never been, the owner or operator of the drycleaning facility
355 where the contamination exists; or
356 3. A brownfield site in a designated brownfield area under
357 s. 376.80.
358 (b) A tax credit applicant, or multiple tax credit
359 applicants working jointly to clean up a single site, may not be
360 granted more than $500,000 ~~$250,000~~ per year in tax credits for

361 each site voluntarily rehabilitated. Multiple tax credit
362 applicants shall be granted tax credits in the same proportion
363 as their contribution to payment of cleanup costs. Tax credits
364 are available only for site rehabilitation conducted during the
365 calendar year for which the tax credit application is submitted.
366 (c) In order to encourage completion of site
367 rehabilitation at contaminated sites that are being voluntarily
368 cleaned up and that are eligible for a tax credit under this
369 section, the tax credit applicant may claim an additional 25 ~~10~~
370 percent of the total cleanup costs, not to exceed $500,000
371 ~~$50,000~~, in the final year of cleanup as evidenced by the
372 Department of Environmental Protection issuing a "No Further
373 Action" order for that site.
374 (d) In order to encourage the construction of housing that
375 meets the definition of affordable provided in s. 420.0004(3),
376 an applicant for the tax credit may claim an additional 25
377 percent of the total site-rehabilitation costs that are eligible
378 for tax credits under this section, not to exceed $500,000. In
379 order to receive this additional tax credit, the applicant must
380 provide a certification letter from the Florida Housing Finance
381 Corporation, the local housing authority, or other governmental
382 agency that is a party to the use agreement, indicating that the
383 construction on the brownfield site is complete, the brownfield
384 site has received a certificate of occupancy, and the brownfield
385 site has a properly recorded instrument that limits the use of
386 the property to housing that meets the definition of affordable
387 provided in s. 420.0004(3). Notwithstanding the limitation that
388 only one application shall be submitted each year for each site,
389 an application for the additional credit provided for in this
390 paragraph shall be submitted as soon as all requirements to
391 obtain this additional tax credit have been met.

392 (4) ~~(3)~~ The Department of Environmental Protection shall be
393 responsible for allocating the tax credits provided for in ss.
394 199.1055 and 220.1845, not to exceed a total of $5 ~~$2~~ million in
395 tax credits annually.
396 (5) ~~(4)~~ To claim the credit for site rehabilitation
397 conducted during the current calendar year, each tax credit
398 applicant must apply to the Department of Environmental
399 Protection for an allocation of the $5 ~~$2~~ million annual credit
400 by January 15 of the following year on a form developed by the
401 Department of Environmental Protection in cooperation with the
402 Department of Revenue. The form shall include an affidavit from
403 each tax credit applicant certifying that all information
404 contained in the application, including all records of costs
405 incurred and claimed in the tax credit application, are true and
406 correct. If the application is submitted pursuant to
407 subparagraph (2)(a)2., the form must include an affidavit signed
408 by the real property owner stating that it is not, and has never
409 been, the owner or operator of the drycleaning facility where
410 the contamination exists. Approval of partial tax credits must
411 be accomplished on a first-come, first-served basis based upon
412 the date complete applications are received by the Division of
413 Waste Management. A tax credit applicant shall submit only one
414 complete application per site for each calendar year's site
415 rehabilitation costs. Incomplete placeholder applications shall
416 not be accepted and will not secure a place in the first-come,
417 first-served application line. To be eligible for a tax credit,
418 the tax credit applicant must:
419 (a) Have entered into a voluntary cleanup agreement with
420 the Department of Environmental Protection for a drycleaning-
421 solvent-contaminated site or a Brownfield Site Rehabilitation
422 Agreement, as applicable; and

423 (b) Have paid all deductibles pursuant to s.
424 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
425 sites.
426 (6) ~~(5)~~ To obtain the tax credit certificate, a tax credit
427 applicant must annually file an application for certification,
428 which must be received by the Division of Waste Management of
429 the Department of Environmental Protection by January 15 of the
430 year following the calendar year for which site rehabilitation
431 costs are being claimed in a tax credit application. The tax
432 credit applicant must provide all pertinent information
433 requested on the tax credit application form, including, at a
434 minimum, the name and address of the tax credit applicant and
435 the address and tracking identification number of the eligible
436 site. Along with the tax credit application form, the tax credit
437 applicant must submit the following:
438 (a) A nonrefundable review fee of $250 made payable to the
439 Water Quality Assurance Trust Fund to cover the administrative
440 costs associated with the department's review of the tax credit
441 application;
442 (b) Copies of contracts and documentation of contract
443 negotiations, accounts, invoices, sales tickets, or other
444 payment records from purchases, sales, leases, or other
445 transactions involving actual costs incurred for that tax year
446 related to site rehabilitation, as that term is defined in ss.
447 376.301 and 376.79;
448 (c) Proof that the documentation submitted pursuant to
449 paragraph (b) has been reviewed and verified by an independent
450 certified public accountant in accordance with standards
451 established by the American Institute of Certified Public
452 Accountants. Specifically, the certified public accountant must
453 attest to the accuracy and validity of the costs incurred and

454 paid by conducting an independent review of the data presented
455 by the tax credit applicant. Accuracy and validity of costs
456 incurred and paid would be determined once the level of effort
457 was certified by an appropriate professional registered in this
458 state in each contributing technical discipline. The certified
459 public accountant's report would also attest that the costs
460 included in the application form are not duplicated within the
461 application. A copy of the accountant's report shall be
462 submitted to the Department of Environmental Protection with the
463 tax credit application; and
464 (d) A certification form stating that site rehabilitation
465 activities associated with the documentation submitted pursuant
466 to paragraph (b) have been conducted under the observation of,
467 and related technical documents have been signed and sealed by,
468 an appropriate professional registered in this state in each
469 contributing technical discipline. The certification form shall
470 be signed and sealed by the appropriate registered professionals
471 stating that the costs incurred were integral, necessary, and
472 required for site rehabilitation, as that term is defined in ss.
473 376.301 and 376.79.
474 (7) ~~(6)~~ The certified public accountant and appropriate
475 registered professionals submitting forms as part of a tax
476 credit application must verify such forms. Verification must be
477 accomplished as provided in s. 92.525(1)(b) and subject to the
478 provisions of s. 92.525(3).
479 (8) ~~(7)~~ The Department of Environmental Protection shall
480 review the tax credit application and any supplemental
481 documentation that the tax credit applicant may submit prior to
482 the annual application deadline in order to have the application
483 considered complete, for the purpose of verifying that the tax
484 credit applicant has met the qualifying criteria in subsections

485 (2) and (4) and has submitted all required documentation listed
486 in subsection (5). Upon verification that the tax credit
487 applicant has met these requirements, the department shall issue
488 a written decision granting eligibility for partial tax credits
489 (a tax credit certificate) in the amount of 50 ~~35~~ percent of the
490 total costs claimed, subject to the $500,000 ~~$250,000~~
491 limitation, for the calendar year for which the tax credit
492 application is submitted based on the report of the certified
493 public accountant and the certifications from the appropriate
494 registered technical professionals.
495 (9) ~~(8)~~ On or before March 1, the Department of
496 Environmental Protection shall inform each eligible tax credit
497 applicant of the amount of its partial tax credit and provide
498 each eligible tax credit applicant with a tax credit certificate
499 that must be submitted with its tax return to the Department of
500 Revenue to claim the tax credit or be transferred pursuant to s.
501 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
502 the payment of refunds if total credits exceed the amount of tax
503 owed.
504 (10) ~~(9)~~ If a tax credit applicant does not receive a tax
505 credit allocation due to an exhaustion of the $5 ~~$2~~ million
506 annual tax credit authorization, such application will then be
507 included in the same first-come, first-served order in the next
508 year's annual tax credit allocation, if any, based on the prior
509 year application.
510 (11) ~~(10)~~ The Department of Environmental Protection may
511 adopt rules to prescribe the necessary forms required to claim
512 tax credits under this section and to provide the administrative
513 guidelines and procedures required to administer this section.
514 (12) ~~(11)~~ The Department of Environmental Protection may
515 revoke or modify any written decision granting eligibility for

516 partial tax credits under this section if it is discovered that
517 the tax credit applicant submitted any false statement,
518 representation, or certification in any application, record,
519 report, plan, or other document filed in an attempt to receive
520 partial tax credits under this section. The Department of
521 Environmental Protection shall immediately notify the Department
522 of Revenue of any revoked or modified orders affecting
523 previously granted partial tax credits. Additionally, the tax
524 credit applicant must notify the Department of Revenue of any
525 change in its tax credit claimed.

526 (13) ~~(12)~~ A tax credit applicant who receives state-funded
527 site rehabilitation under s. 376.3078(3) for rehabilitation of a
528 drycleaning-solvent-contaminated site is ineligible to receive a
529 tax credit under s. 199.1055 or s. 220.1845 for costs incurred
530 by the tax credit applicant in conjunction with the
531 rehabilitation of that site during the same time period that
532 state-administered site rehabilitation was underway.

533 (14) At any brownfield site in a designated brownfield area
534 under s. 376.80, a tax credit applicant may also claim tax
535 credits pursuant to the requirements of this section for
536 voluntary cleanup of sites impacted by solid waste subject to
537 the following criteria:

538 (a) For purposes of this subsection:

539 1. "Solid waste" shall have the meaning found in s.
540 403.703(13);

541 2. "Sites impacted by solid waste" must be located in an
542 "urban area."

543 3. "Urban area" shall have the meaning found in s.
544 380.503(15);

545 4. "Sites impacted by solid waste" shall not include sites
546 that merely have litter or debris scattered on the surface of
547 the land; and
548 5. "Sites impacted by solid waste" shall not include sites
549 where the clean up activity addresses the disposal of solid
550 waste transported from another location for the purpose of
551 disposal on the disposal site, and for the pecuniary gain of the
552 prior or current property owner or operator of the disposal
553 site.
554 (b) Tax credits may be claimed for one or more of the
555 following activities:
556 1. Analytical work to assess potential contamination in any
557 media;
558 2. Sorting, screening, separating, excavating, removing, or
559 disposing of solid waste in a manner consistent with Florida
560 law;
561 3. Backfilling with clean fill excavated areas where solid
562 waste was removed;
563 4. Compacting excavated areas where solid waste was
564 removed;
565 5. Establishing institutional controls; and
566 6. Engineering work directly associated with the activities
567 listed in this paragraph (b).
568 (c) Costs for compacting the solid waste shall not be
569 eligible for tax credits pursuant to this section; and
570 (d) No activities conducted in accordance with this
571 subsection (14) shall be considered site rehabilitation.
572 (15) In implementing subsection (14), the Department shall
573 use the same criteria, requirements, and limitations detailed in
574 subsections (1) through (13) of this section and sections
575 199.1055 and 220.1845, with the following exceptions:

576 (a) Where reference is made to "site rehabilitation," the
577 Department shall instead consider whether the costs claimed are
578 for voluntary cleanup of sites impacted by solid waste as
579 outlined in subsection (14);
580 (b) In lieu of the certification requirements of paragraph
581 (5)(d), a tax credit applicant seeking a tax credit pursuant to
582 subsection (14) shall include in its tax credit application:
583 1. A certification that the applicant has determined, after
584 consultation with local government officials and the Department,
585 that, to the best of the applicant's knowledge, the clean up
586 activity did not address the disposal of solid waste transported
587 from another location for the purpose of disposal on the
588 disposal site, and for the pecuniary gain of the prior or
589 current property owner or operator of the disposal site;
590 2. A certification that the applicant has determined, after
591 consultation with local government officials, that the disposal
592 of the solid waste was in an urban area;
593 3. A certification signed and sealed by an appropriate
594 registered professional that costs incurred and claimed in the
595 tax credit application were integral, necessary and required to
596 conduct those activities listed in paragraph (14)(b), as
597 applicable; and
598 4. A certification that the applicant did not cause or
599 contribute to the disposal of the solid waste.
600 (c) Tax credit applications claiming costs pursuant to
601 paragraph (14)(b) shall not be subject to the calendar-year
602 limitation and January 15 annual application deadline, and
603 instead the Department shall accept a one-time application filed
604 subsequent to the tax credit applicant completing the applicable
605 requirements listed in subsection (14) and this subsection;

606 (d) The additional percentage allowed by paragraph (2)(c)
607 and paragraphs 199.1055(1)(h) and 220.1845(1)(i) is applicable
608 to tax credits claimed pursuant to subsection (14) only if all
609 solid waste has been removed from the site;
610 (e) The Department shall have 60 days from the date of
611 receipt of any application claiming tax credits pursuant to
612 subsection (14) to process the application and grant or deny the
613 claimed tax credits; and
614 (f) Subsection 14 and this subsection shall not be
615 construed to broaden the authority of local governments to
616 designate brownfield areas under s. 376.80.
617 ~~(14) At eligible sites listed in paragraph (2)(a), in addition~~
618 ~~to any tax credits that may be claimed for site rehabilitation~~
619 ~~as defined in s. 376.301, a tax credit applicant may also claim~~
620 ~~tax credits pursuant to the requirements of this section for~~
621 ~~voluntary cleanup activity that addresses a solid waste disposal~~
622 ~~facility, subject to the following criteria:~~
623 ~~(a) For purposes of this subsection, "solid waste" and "solid~~
624 ~~waste disposal facility" have the same meanings as defined in s.~~
625 ~~403.703, but shall not include sites that merely have litter or~~
626 ~~debris scattered on the surface of the land;~~
627 ~~(b) The solid waste disposal facility must have ceased operation~~
628 ~~prior to 1988 and must not have been or must not currently be~~
629 ~~subject to any department solid waste permit;~~
630 ~~(c) Tax credits may be claimed for one or more of the following~~
631 ~~activities:~~
632 ~~1. Removing all solid waste from the solid waste disposal~~
633 ~~facility and disposing of it in a permitted solid waste~~
634 ~~management facility;~~
635 ~~2. Closing the solid waste disposal facility, which may include~~
636 ~~partial removal and disposal of solid waste in a permitted solid~~

637 ~~waste management facility, in accordance with the requirements~~
638 ~~of chapter 62-701, Florida Administrative Code, including~~
639 ~~grading the facility to achieve appropriate side slopes,~~
640 ~~installing final cover, controlling stormwater, and providing~~
641 ~~gas management, if necessary;~~
642 ~~3. Performing long-term care for the solid waste disposal~~
643 ~~facility in accordance with the requirements of chapter 62-701,~~
644 ~~Florida Administrative Code, after the facility has been~~
645 ~~properly closed; and~~
646 ~~4. Performing groundwater evaluation and assessment after~~
647 ~~removal of all solid waste or after the solid waste disposal~~
648 ~~facility has been properly closed;~~
649 ~~(d) If the solid waste disposal facility is closed as described~~
650 ~~in subparagraph (c)2., the redevelopment of the property~~
651 ~~containing the solid waste disposal facility shall be limited to~~
652 ~~commercial or industrial land use only and shall be subject to~~
653 ~~appropriate engineering and institutional controls, and tax~~
654 ~~credits shall be awarded only after a restrictive covenant~~
655 ~~limiting future uses of the property has been reviewed and~~
656 ~~approved by the department and properly recorded;~~
657 ~~(e) Costs for crushing or compacting the solid waste in place~~
658 ~~solely to make it suitable for future development shall not be~~
659 ~~eligible for tax credits pursuant to this section; and~~
660 ~~(f) Any activity conducted in accordance with this subsection~~
661 ~~shall not be considered site rehabilitation.~~
662 ~~(15) In implementing subsection (13), the department shall use~~
663 ~~the same criteria, requirements, and limitations detailed in~~
664 ~~subsections (1)-(12) of this section and ss. 199.1055 and~~
665 ~~220.1845, with the following exceptions:~~
666 ~~(a) Where reference is made to "site rehabilitation," the~~
667 ~~department shall consider whether the costs claimed are for~~

668 ~~voluntary cleanup activity that addresses a solid waste disposal~~
669 ~~facility as outlined in subsection (13);~~
670 ~~(b) In lieu of the certification requirements of paragraph~~
671 ~~(5)(d), a tax credit applicant seeking a tax credit pursuant to~~
672 ~~subsection (13) shall include in the tax credit application:~~
673 ~~1. A certification that the applicant has determined, after~~
674 ~~consultation with local government officials and the department,~~
675 ~~that the solid waste disposal facility ceased operating prior to~~
676 ~~January 1, 1974, and is not or has never been subject to a solid~~
677 ~~waste permit;~~
678 ~~2. A certification signed and sealed by an appropriate~~
679 ~~registered professional and previously approved by the~~
680 ~~department that the solid waste disposal facility has been~~
681 ~~properly closed pursuant to chapter 62-701, Florida~~
682 ~~Administrative Code, or that all solid waste was removed and~~
683 ~~properly disposed of; and~~
684 ~~3. A certification signed and sealed by an appropriate~~
685 ~~registered professional that costs incurred and claimed in the~~
686 ~~tax credit application were integral, necessary, and required to~~
687 ~~conduct those activities listed in paragraph (13)(c), as~~
688 ~~applicable;~~
689 ~~(c) Tax credit applications in which costs are claimed pursuant~~
690 ~~to subparagraphs (13)(c)1. and 2. shall not be subject to the~~
691 ~~calendar-year limitation and January 15 annual application~~
692 ~~deadline, but the department shall accept a one time application~~
693 ~~filed after the tax credit applicant has completed all~~
694 ~~requirements listed in subsection (13) and this subsection;~~
695 ~~(d) Notwithstanding the tax credit percentage established in~~
696 ~~subsections (2) and (7) and ss. 199.1055 and 220.1845, the tax~~
697 ~~credit for activities conducted pursuant to subparagraphs~~

698 ~~(13)(c)2.-4. relating to closure of a solid waste disposal~~
699 ~~facility shall be limited to 25 percent;~~
700 ~~(e) The additional percentage allowed by paragraph (2)(c) and~~
701 ~~ss. 199.1055(1)(h) and 220.1845(1)(i) is not applicable to tax~~
702 ~~credits claimed pursuant to subsection (13); and~~
703 ~~(f) The department shall have 60 days after the date of receipt~~
704 ~~of any application claiming tax credits pursuant to subsection~~
705 ~~(13) to process the application and grant or deny the claimed~~
706 ~~tax credits.~~
707 Section 4. Subsections (15) and (16) of section 196.012,
708 Florida Statutes, are amended to read:
709 196.012 Definitions.--For the purpose of this chapter, the
710 following terms are defined as follows, except where the context
711 clearly indicates otherwise:
712 (15) "New business" means:
713 (a)1. A business establishing 10 or more jobs to employ 10
714 or more full-time employees in this state, which manufactures,
715 processes, compounds, fabricates, or produces for sale items of
716 tangible personal property at a fixed location and which
717 comprises an industrial or manufacturing plant;
718 2. A business establishing 25 or more jobs to employ 25 or
719 more full-time employees in this state, the sales factor of
720 which, as defined by s. 220.15(5), for the facility with respect
721 to which it requests an economic development ad valorem tax
722 exemption is less than 0.50 for each year the exemption is
723 claimed; or
724 3. An office space in this state owned and used by a
725 corporation newly domiciled in this state; provided such office
726 space houses 50 or more full-time employees of such corporation;

727 provided that such business or office first begins operation on
728 a site clearly separate from any other commercial or industrial
729 operation owned by the same business.
730 (b) Any business located in an enterprise zone or
731 brownfield area that first begins operation on a site clearly
732 separate from any other commercial or industrial operation owned
733 by the same business.
734 (c) A business that is situated on property annexed into a
735 municipality and that, at the time of the annexation, is
736 receiving an economic development ad valorem tax exemption from
737 the county under s. 196.1995.
738 (16) "Expansion of an existing business" means:
739 (a)1. A business establishing 10 or more jobs to employ 10
740 or more full-time employees in this state, which manufactures,
741 processes, compounds, fabricates, or produces for sale items of
742 tangible personal property at a fixed location and which
743 comprises an industrial or manufacturing plant; or
744 2. A business establishing 25 or more jobs to employ 25 or
745 more full-time employees in this state, the sales factor of
746 which, as defined by s. 220.15(5), for the facility with respect
747 to which it requests an economic development ad valorem tax
748 exemption is less than 0.50 for each year the exemption is
749 claimed; provided that such business increases operations on a
750 site colocated with a commercial or industrial operation owned
751 by the same business, resulting in a net increase in employment
752 of not less than 10 percent or an increase in productive output
753 of not less than 10 percent.
754 (b) Any business located in an enterprise zone or
755 brownfield area that increases operations on a site colocated
756 with a commercial or industrial operation owned by the same
757 business.

758 Section 5. Section 196.1995, Florida Statutes, is amended
759 to read:
760 196.1995 Economic development ad valorem tax exemption.--
761 (1) The board of county commissioners of any county or the
762 governing authority of any municipality shall call a referendum
763 within its total jurisdiction to determine whether its
764 respective jurisdiction may grant economic development ad
765 valorem tax exemptions under s. 3, Art. VII of the State
766 Constitution if:
767 (a) The board of county commissioners of the county or the
768 governing authority of the municipality votes to hold such
769 referendum; or
770 (b) The board of county commissioners of the county or the
771 governing authority of the municipality receives a petition
772 signed by 10 percent of the registered electors of its
773 respective jurisdiction, which petition calls for the holding of
774 such referendum.
775 (2) The ballot question in such referendum shall be in
776 substantially the following form:
777
778 Shall the board of county commissioners of this county (or the
779 governing authority of this municipality, or both) be authorized
780 to grant, pursuant to s. 3, Art. VII of the State Constitution,
781 property tax exemptions to new businesses and expansions of
782 existing businesses?
783 ____ Yes--For authority to grant exemptions.
784 ____ No--Against authority to grant exemptions.
785 (3) The board of county commissioners or the governing
786 authority of the municipality that ~~which~~ calls a referendum
787 within its total jurisdiction to determine whether its
788 respective jurisdiction may grant economic development ad

789 valorem tax exemptions may vote to limit the effect of the
790 referendum to authority to grant economic development tax
791 exemptions for new businesses and expansions of existing
792 businesses located in an enterprise zone or a brownfield area,
793 as defined in s. 376.79(4). If ~~In the event that~~ an area
794 nominated to be an enterprise zone pursuant to s. 290.0055 has
795 not yet been designated pursuant to s. 290.0065 or has not been
796 designated as a brownfield pursuant to s. 376.80, the board of
797 county commissioners or the governing authority of the
798 municipality may call such referendum prior to such designation;
799 however, the authority to grant economic development ad valorem
800 tax exemptions does ~~will~~ not apply until such area is designated
801 pursuant to s. 290.0065. The ballot question in such referendum
802 shall be in substantially the following form and shall be used
803 in lieu of the ballot question prescribed in subsection (2):
804
805 Shall the board of county commissioners of this county (or the
806 governing authority of this municipality, or both) be authorized
807 to grant, pursuant to s. 3, Art. VII of the State Constitution,
808 property tax exemptions for new businesses and expansions of
809 existing businesses which are located in an enterprise zone or a
810 brownfield area?
811 ____Yes--For authority to grant exemptions.
812 ____No--Against authority to grant exemptions.
813 (4) A referendum pursuant to this section may be called
814 only once in any 12-month period.
815 (5) Upon a majority vote in favor of such authority, the
816 board of county commissioners or the governing authority of the
817 municipality, at its discretion, by ordinance may exempt from ad
818 valorem taxation up to 100 percent of the assessed value of all
819 improvements to real property made by or for the use of a new

820 business and of all tangible personal property of such new
821 business, or up to 100 percent of the assessed value of all
822 added improvements to real property made to facilitate the
823 expansion of an existing business and of the net increase in all
824 tangible personal property acquired to facilitate such expansion
825 of an existing business, provided that the improvements to real
826 property are made or the tangible personal property is added or
827 increased on or after the day the ordinance is adopted. However,
828 if the authority to grant exemptions is approved in a referendum
829 in which the ballot question contained in subsection (3) appears
830 on the ballot, the authority of the board of county
831 commissioners or the governing authority of the municipality to
832 grant exemptions is limited solely to new businesses and
833 expansions of existing businesses that ~~which~~ are located in an
834 enterprise zone or brownfield area. Property acquired to replace
835 existing property shall not be considered to facilitate a
836 business expansion. The exemption applies only to taxes levied
837 by the respective unit of government granting the exemption.
838 The exemption does not apply, however, to taxes levied for the
839 payment of bonds or to taxes authorized by a vote of the
840 electors pursuant to s. 9(b) or s. 12, Art. VII of the State
841 Constitution. Any such exemption shall remain in effect for up
842 to 10 years with respect to any particular facility, regardless
843 of any change in the authority of the county or municipality to
844 grant such exemptions. The exemption shall not be prolonged or
845 extended by granting exemptions from additional taxes or by
846 virtue of any reorganization or sale of the business receiving
847 the exemption.
848 (6) With respect to a new business as defined by s.
849 196.012(15)(c), the municipality annexing the property on which
850 the business is situated may grant an economic development ad

851 valorem tax exemption under this section to that business for a
852 period that will expire upon the expiration of the exemption
853 granted by the county. If the county renews the exemption under
854 subsection (7), the municipality may also extend its exemption.
855 A municipal economic development ad valorem tax exemption
856 granted under this subsection may not extend beyond the duration
857 of the county exemption.
858 (7) The authority to grant exemptions under this section
859 will expire 10 years after the date such authority was approved
860 in an election, but such authority may be renewed for another
861 10-year period in a referendum called and held pursuant to this
862 section.
863 (8) Any person, firm, or corporation which desires an
864 economic development ad valorem tax exemption shall, in the year
865 the exemption is desired to take effect, file a written
866 application on a form prescribed by the department with the
867 board of county commissioners or the governing authority of the
868 municipality, or both. The application shall request the
869 adoption of an ordinance granting the applicant an exemption
870 pursuant to this section and shall include the following
871 information:
872 (a) The name and location of the new business or the
873 expansion of an existing business;
874 (b) A description of the improvements to real property for
875 which an exemption is requested and the date of commencement of
876 construction of such improvements;
877 (c) A description of the tangible personal property for
878 which an exemption is requested and the dates when such property
879 was or is to be purchased;
880 (d) Proof, to the satisfaction of the board of county
881 commissioners or the governing authority of the municipality,

882 that the applicant is a new business or an expansion of an
883 existing business, as defined in s. 196.012(15) or (16); and
884 (e) Other information deemed necessary by the department.
885 (9) Before it takes action on the application, the board
886 of county commissioners or the governing authority of the
887 municipality shall deliver a copy of the application to the
888 property appraiser of the county. After careful consideration,
889 the property appraiser shall report the following information to
890 the board of county commissioners or the governing authority of
891 the municipality:
892 (a) The total revenue available to the county or
893 municipality for the current fiscal year from ad valorem tax
894 sources, or an estimate of such revenue if the actual total
895 revenue available cannot be determined;
896 (b) Any revenue lost to the county or municipality for the
897 current fiscal year by virtue of exemptions previously granted
898 under this section, or an estimate of such revenue if the actual
899 revenue lost cannot be determined;
900 (c) An estimate of the revenue which would be lost to the
901 county or municipality during the current fiscal year if the
902 exemption applied for were granted had the property for which
903 the exemption is requested otherwise been subject to taxation;
904 and
905 (d) A determination as to whether the property for which
906 an exemption is requested is to be incorporated into a new
907 business or the expansion of an existing business, as defined in
908 s. 196.012(15) or (16), or into neither, which determination the
909 property appraiser shall also affix to the face of the
910 application. Upon the request of the property appraiser, the
911 department shall provide to him or her such information as it
912 may have available to assist in making such determination.

913 (10) An ordinance granting an exemption under this section
914 shall be adopted in the same manner as any other ordinance of
915 the county or municipality and shall include the following:
916 (a) The name and address of the new business or expansion
917 of an existing business to which the exemption is granted;
918 (b) The total amount of revenue available to the county or
919 municipality from ad valorem tax sources for the current fiscal
920 year, the total amount of revenue lost to the county or
921 municipality for the current fiscal year by virtue of economic
922 development ad valorem tax exemptions currently in effect, and
923 the estimated revenue loss to the county or municipality for the
924 current fiscal year attributable to the exemption of the
925 business named in the ordinance;
926 (c) The period of time for which the exemption will remain
927 in effect and the expiration date of the exemption; and
928 (d) A finding that the business named in the ordinance
929 meets the requirements of s. 196.012(15) or (16).
930 Section 6. Subsection (2) of section 288.9015, Florida
931 Statutes, is amended to read:
932 288.9015 Enterprise Florida, Inc.; purpose; duties.--
933 (2) It shall be the responsibility of Enterprise Florida,
934 Inc., to aggressively market Florida's rural communities,
935 distressed urban communities, <u>brownfields,</u> and enterprise zones
936 as locations for potential new investment, to aggressively
937 assist in the retention and expansion of existing businesses in
938 these communities, and to aggressively assist these communities
939 in the identification and development of new economic
940 development opportunities for job creation, fully marketing
941 state incentive programs such as the Qualified Target Industry
942 Tax Refund Program under s. 288.106 and the Quick Action Closing
943 Fund under s. 288.1088 in economically distressed areas.

944 Section 7. Section 376.80, Florida Statutes, is amended to
945 read:
946 376.80 Brownfield program administration process.--
947 (1) A local government with jurisdiction over the
948 brownfield area must notify the department of its decision to
949 designate a brownfield area for rehabilitation for the purposes
950 of ss. 376.77-376.85. The notification must include a
951 resolution, by the local government body, to which is attached a
952 map adequate to clearly delineate exactly which parcels are to
953 be included in the brownfield area or alternatively a less-
954 detailed map accompanied by a detailed legal description of the
955 brownfield area. If a property owner within the area proposed
956 for designation by the local government requests in writing to
957 have his or her property removed from the proposed designation,
958 the local government shall grant the request. For
959 municipalities, the governing body shall adopt the resolution in
960 accordance with the procedures outlined in s. 166.041, except
961 that the notice for the public hearings on the proposed
962 resolution must be in the form established in s. 166.041(3)(c)2.
963 For counties, the governing body shall adopt the resolution in
964 accordance with the procedures outlined in s. 125.66, except
965 that the notice for the public hearings on the proposed
966 resolution shall be in the form established in s. 125.66(4)(b)2.
967 (2)(a) If a local government proposes to designate a
968 brownfield area that is outside community redevelopment areas,
969 enterprise zones, empowerment zones, closed military bases, or
970 designated brownfield pilot project areas, the local government
971 must conduct at least one public hearing in the area to be
972 designated to provide an opportunity for public input on the
973 size of the area, the objectives for rehabilitation, job
974 opportunities and economic developments anticipated,

975 neighborhood residents' considerations, and other relevant local
976 concerns. Notice of the public hearing must be made in a
977 newspaper of general circulation in the area and the notice must
978 be at least 16 square inches in size, must be in ethnic
979 newspapers or local community bulletins, must be posted in the
980 affected area, and must be announced at a scheduled meeting of
981 the local governing body before the actual public hearing. In
982 determining the areas to be designated, the local government
983 must consider:
984 1. Whether the brownfield area warrants economic
985 development and has a reasonable potential for such activities;
986 2. Whether the proposed area to be designated represents a
987 reasonably focused approach and is not overly large in
988 geographic coverage;
989 3. Whether the area has potential to interest the private
990 sector in participating in rehabilitation; and
991 4. Whether the area contains sites or parts of sites
992 suitable for limited recreational open space, cultural, or
993 historical preservation purposes.
994 (b) A local government shall designate a brownfield area
995 under the provisions of this act provided that:
996 1. A person who owns or controls a potential brownfield
997 site is requesting the designation and has agreed to
998 rehabilitate and redevelop the brownfield site;
999 2. The rehabilitation and redevelopment of the proposed
1000 brownfield site will result in economic productivity of the
1001 area, along with the creation of at least 5 ~~10~~ new permanent
1002 jobs at the brownfield site~~, whether full-time or part-time,~~
1003 which are full-time equivalent positions not associated with the
1004 implementation of the brownfield site rehabilitation agreement
1005 and which are not associated with redevelopment project

1006 demolition or construction activities pursuant to the
1007 redevelopment agreement required under paragraph (5)(i).
1008 However, the job-creation requirement may not apply to the
1009 rehabilitation and redevelopment of a brownfield site that will
1010 provide affordable housing as defined in s. 420.0004(3) or the
1011 creation of recreational areas, conservation areas, or parks;
1012 3. The redevelopment of the proposed brownfield site is
1013 consistent with the local comprehensive plan and is a
1014 permittable use under the applicable local land development
1015 regulations;
1016 4. Notice of the proposed rehabilitation of the brownfield
1017 area has been provided to neighbors and nearby residents of the
1018 proposed area to be designated, and the person proposing the
1019 area for designation has afforded to those receiving notice the
1020 opportunity for comments and suggestions about rehabilitation.
1021 Notice pursuant to this subsection must be made in a newspaper
1022 of general circulation in the area, at least 16 square inches in
1023 size, and the notice must be posted in the affected area; and
1024 5. The person proposing the area for designation has
1025 provided reasonable assurance that he or she has sufficient
1026 financial resources to implement and complete the rehabilitation
1027 agreement and redevelopment plan.
1028 (c) The designation of a brownfield area and the
1029 identification of a person responsible for brownfield site
1030 rehabilitation simply entitles the identified person to
1031 negotiate a brownfield site rehabilitation agreement with the
1032 department or approved local pollution control program.
1033 (3) When there is a person responsible for brownfield site
1034 rehabilitation, the local government must notify the department
1035 of the identity of that person. If the agency or person who will
1036 be responsible for the coordination changes during the approval

1037 process specified in subsections (4), (5), and (6), the
1038 department or the affected approved local pollution control
1039 program must notify the affected local government when the
1040 change occurs.

1041 (4) Local governments or persons responsible for
1042 rehabilitation and redevelopment of brownfield areas must
1043 establish an advisory committee or use an existing advisory
1044 committee that has formally expressed its intent to address
1045 redevelopment of the specific brownfield area for the purpose of
1046 improving public participation and receiving public comments on
1047 rehabilitation and redevelopment of the brownfield area, future
1048 land use, local employment opportunities, community safety, and
1049 environmental justice. Such advisory committee should include
1050 residents within or adjacent to the brownfield area, businesses
1051 operating within the brownfield area, and others deemed
1052 appropriate. The person responsible for brownfield site
1053 rehabilitation must notify the advisory committee of the intent
1054 to rehabilitate and redevelop the site before executing the
1055 brownfield site rehabilitation agreement, and provide the
1056 committee with a copy of the draft plan for site rehabilitation
1057 which addresses elements required by subsection (5). This
1058 includes disclosing potential reuse of the property as well as
1059 site rehabilitation activities, if any, to be performed. The
1060 advisory committee shall review the proposed redevelopment
1061 agreement required pursuant to paragraph (5)(i) and provide
1062 comments, if appropriate, to the board of the local government
1063 with jurisdiction over the brownfield area. The advisory
1064 committee must receive a copy of the executed brownfield site
1065 rehabilitation agreement. When the person responsible for
1066 brownfield site rehabilitation submits a site assessment report
1067 or the technical document containing the proposed course of

1068 action following site assessment to the department or the local
1069 pollution control program for review, the person responsible for
1070 brownfield site rehabilitation must hold a meeting or attend a
1071 regularly scheduled meeting to inform the advisory committee of
1072 the findings and recommendations in the site assessment report
1073 or the technical document containing the proposed course of
1074 action following site assessment.
1075 (5) The person responsible for brownfield site
1076 rehabilitation must enter into a brownfield site rehabilitation
1077 agreement with the department or an approved local pollution
1078 control program if actual contamination exists at the brownfield
1079 site. The brownfield site rehabilitation agreement must include:
1080 (a) A brownfield site rehabilitation schedule, including
1081 milestones for completion of site rehabilitation tasks and
1082 submittal of technical reports and rehabilitation plans as
1083 agreed upon by the parties to the agreement;
1084 (b) A commitment to conduct site rehabilitation activities
1085 under the observation of professional engineers or geologists
1086 who are registered in accordance with the requirements of
1087 chapter 471 or chapter 492, respectively. Submittals provided by
1088 the person responsible for brownfield site rehabilitation must
1089 be signed and sealed by a professional engineer registered under
1090 chapter 471, or a professional geologist registered under
1091 chapter 492, certifying that the submittal and associated work
1092 comply with the law and rules of the department and those
1093 governing the profession. In addition, upon completion of the
1094 approved remedial action, the department shall require a
1095 professional engineer registered under chapter 471 or a
1096 professional geologist registered under chapter 492 to certify
1097 that the corrective action was, to the best of his or her

1098 knowledge, completed in substantial conformance with the plans
1099 and specifications approved by the department;
1100 (c) A commitment to conduct site rehabilitation in
1101 accordance with department quality assurance rules;
1102 (d) A commitment to conduct site rehabilitation consistent
1103 with state, federal, and local laws and consistent with the
1104 brownfield site contamination cleanup criteria in s. 376.81,
1105 including any applicable requirements for risk-based corrective
1106 action;
1107 (e) Timeframes for the department's review of technical
1108 reports and plans submitted in accordance with the agreement.
1109 The department shall make every effort to adhere to established
1110 agency goals for reasonable timeframes for review of such
1111 documents;
1112 (f) A commitment to secure site access for the department
1113 or approved local pollution control program to all brownfield
1114 sites within the eligible brownfield area for activities
1115 associated with site rehabilitation;
1116 (g) Other provisions that the person responsible for
1117 brownfield site rehabilitation and the department agree upon,
1118 that are consistent with ss. 376.77-376.85, and that will
1119 improve or enhance the brownfield site rehabilitation process;
1120 (h) A commitment to consider appropriate pollution
1121 prevention measures and to implement those that the person
1122 responsible for brownfield site rehabilitation determines are
1123 reasonable and cost-effective, taking into account the ultimate
1124 use or uses of the brownfield site. Such measures may include
1125 improved inventory or production controls and procedures for
1126 preventing loss, spills, and leaks of hazardous waste and
1127 materials, and include goals for the reduction of releases of
1128 toxic materials; and

1129 (i) Certification that an agreement exists between the
1130 person responsible for brownfield site rehabilitation and the
1131 local government with jurisdiction over the brownfield area.
1132 Such agreement shall contain terms for the redevelopment of the
1133 brownfield area.
1134 (6) Any contractor performing site rehabilitation program
1135 tasks must demonstrate to the department that the contractor:
1136 (a) Meets all certification and license requirements
1137 imposed by law; and
1138 (b) Has obtained the necessary approvals for conducting
1139 sample collection and analyses pursuant to department rules.
1140 (7) The contractor who is performing the majority of the
1141 site rehabilitation program tasks pursuant to a brownfield site
1142 rehabilitation agreement or supervising the performance of such
1143 tasks by licensed subcontractors in accordance with the
1144 provisions of s. 489.113(9) must certify to the department that
1145 the contractor:
1146 (a) Complies with applicable OSHA regulations.
1147 (b) Maintains workers' compensation insurance for all
1148 employees as required by the Florida Workers' Compensation Law.
1149 (c) Maintains comprehensive general liability coverage
1150 with limits of not less than $1 million per occurrence and $2
1151 million general aggregate for bodily injury and property damage
1152 and comprehensive automobile liability coverage with limits of
1153 not less than $2 million combined single limit. The contractor
1154 shall also maintain pollution liability coverage with limits of
1155 not less than $3 million aggregate for personal injury or death,
1156 $1 million per occurrence for personal injury or death, and $1
1157 million per occurrence for property damage. The contractor's
1158 certificate of insurance shall name the state as an additional
1159 insured party.

1160 (d) Maintains professional liability insurance of at least
1161 $1 million per claim and $1 million annual aggregate.
1162 (8) Any professional engineer or geologist providing
1163 professional services relating to site rehabilitation program
1164 tasks must carry professional liability insurance with a
1165 coverage limit of at least $1 million.
1166 (9) During the cleanup process, if the department or local
1167 program fails to complete review of a technical document within
1168 the timeframe specified in the brownfield site rehabilitation
1169 agreement, the person responsible for brownfield site
1170 rehabilitation may proceed to the next site rehabilitation task.
1171 However, the person responsible for brownfield site
1172 rehabilitation does so at its own risk and may be required by
1173 the department or local program to complete additional work on a
1174 previous task. Exceptions to this subsection include requests
1175 for "no further action," "monitoring only proposals," and
1176 feasibility studies, which must be approved prior to
1177 implementation.
1178 (10) If the person responsible for brownfield site
1179 rehabilitation fails to comply with the brownfield site
1180 rehabilitation agreement, the department shall allow 90 days for
1181 the person responsible for brownfield site rehabilitation to
1182 return to compliance with the provision at issue or to negotiate
1183 a modification to the brownfield site rehabilitation agreement
1184 with the department for good cause shown. If an imminent hazard
1185 exists, the 90-day grace period shall not apply. If the project
1186 is not returned to compliance with the brownfield site
1187 rehabilitation agreement and a modification cannot be
1188 negotiated, the immunity provisions of s. 376.82 are revoked.
1189 (11) The department is specifically authorized and
1190 encouraged to enter into delegation agreements with local

1191 pollution control programs approved under s. 403.182 to
1192 administer the brownfield program within their jurisdictions,
1193 thereby maximizing the integration of this process with the
1194 other local development processes needed to facilitate
1195 redevelopment of a brownfield area. When determining whether a
1196 delegation pursuant to this subsection of all or part of the
1197 brownfields program to a local pollution control program is
1198 appropriate, the department shall consider the following. The
1199 local pollution control program must:
1200 (a) Have and maintain the administrative organization,
1201 staff, and financial and other resources to effectively and
1202 efficiently implement and enforce the statutory requirements of
1203 the delegated brownfields program; and
1204 (b) Provide for the enforcement of the requirements of the
1205 delegated brownfields program, and for notice and a right to
1206 challenge governmental action, by appropriate administrative and
1207 judicial process, which shall be specified in the delegation.
1208
1209 The local pollution control program shall not be delegated
1210 authority to take action on or to make decisions regarding any
1211 brownfield site on land owned by the local government. Any
1212 delegation agreement entered into pursuant to this subsection
1213 shall contain such terms and conditions necessary to ensure the
1214 effective and efficient administration and enforcement of the
1215 statutory requirements of the brownfields program as established
1216 by the act and the relevant rules and other criteria of the
1217 department.
1218 (12) Local governments are encouraged to use the full
1219 range of economic and tax incentives available to facilitate and
1220 promote the rehabilitation of brownfield areas, to help
1221 eliminate the public health and environmental hazards, and to

1222 promote the creation of jobs and economic development in these
1223 previously run-down, blighted, and underutilized areas.
1224 Section 8. Subsection (1) of section 376.86, Florida
1225 Statutes, is amended to read:
1226 376.86 Brownfield Areas Loan Guarantee Program.--
1227 (1) The Brownfield Areas Loan Guarantee Council is created
1228 to review and approve or deny by a majority vote of its
1229 membership, the situations and circumstances for participation
1230 in partnerships by agreements with local governments, financial
1231 institutions, and others associated with the redevelopment of
1232 brownfield areas pursuant to the Brownfields Redevelopment Act
1233 for a limited state guaranty of up to 5 years of loan guarantees
1234 or loan loss reserves issued pursuant to law. The limited state
1235 loan guaranty applies only to 50 ~~10~~ percent of the primary
1236 lenders loans for redevelopment projects in brownfield areas. If
1237 the redevelopment project is for affordable housing, as defined
1238 in s. 420.0004(3), in a brownfield area, the limited state loan
1239 guaranty applies to 75 percent of the primary lender's loan. A
1240 limited state guaranty of private loans or a loan loss reserve
1241 is authorized for lenders licensed to operate in the state upon
1242 a determination by the council that such an arrangement would be
1243 in the public interest and the likelihood of the success of the
1244 loan is great.
1245 Section 9. Sections 376.87 and 376.875, Florida Statutes,
1246 are repealed.
1247 Section 10. This act shall take effect July 1, 2006.
1248
1249
1250 ========== T I T L E A M E N D M E N T ==========
1251 Remove the entire title and insert:

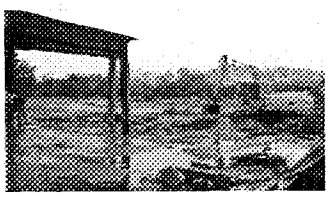
1252 An act relating to the redevelopment of brownfields; amending
1253 ss. 199.1055, 220.1845, and 376.30781, 376.80, and 376.86, F.S.;
1254 increasing the amount and percentage of the credit that may be
1255 applied against the intangible personal property tax and the
1256 corporate income tax for the cost of voluntary cleanup of a
1257 contaminated site; increasing the amount that may be received by
1258 the taxpayer as an incentive to complete the cleanup in the
1259 final year; increasing the total amount of credits that may be
1260 granted in any year; providing tax credits for voluntary cleanup
1261 activities related to solid waste disposal facilities; providing
1262 criteria for eligible sites and activities; increasing the
1263 amount of the Brownfield Areas Loan Guarantee; reducing the job
1264 creation requirements; directing the Department of Environmental
1265 Protection to apply certain criteria, requirements, and
1266 limitations for implementation of such provisions; providing
1267 certain exceptions; amending s. 288.9015, F.S.; requiring
1268 Enterprise Florida, Inc., to aggressively market brownfields;
1269 amending ss. 196.012 and 196.1995, F.S., to include brownfield
1270 areas in the implementation of the economic development ad
1271 valorem tax exemption authorized under s. 3, Art VII of the
1272 Florida Constitution; repealing s. 376.87, F.S., relating to the
1273 Brownfield Property Ownership Clearance Assistance; repealing s.
1274 376.875, F.S., relating to the Brownfield Property Ownership
1275 Clearance Assistance Revolving Loan Trust Fund; amending s.
1276 14.2015, F.S.; deleting a reference to the trust fund to
1277 conform; providing an effective date.

Florida's Brownfields Program

Before and After

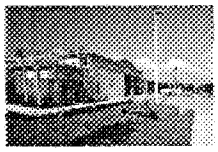
Central Florida Auto Salvage

- Clearwater, Florida
- Junkyard for over 40 years
- Multiple Sources



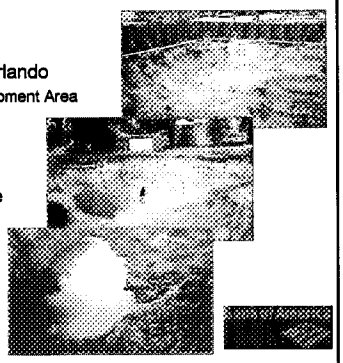
Brownfields Results

- Northwest Fire Station
- Improve Response Times to Underserved Community
- Remove Environmental Blight from the Neighborhood
- Environmental Justice



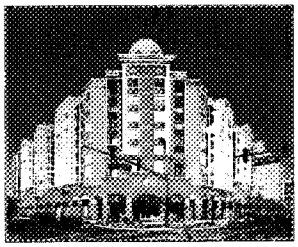
City View

- Parramore Area of Orlando
  - Community Redevelopment Area
  - Enterprise Zone
  - Brownfields Area
- Corner Gas Station
- Underground Storage Tank Removal
- Groundwater Contamination
- Excavation of Petroleum Contamination



City View

- $64 Million
- Mixed-Use/Mixed Income Project
- 266 Apartments
  - 40% Affordable
  - 60% Market Rate
  - $900,000 Building Materials Tax Refund



City View

- 200,000 sf Office
- 25,000 sf Ground Floor Retail
- Hughes Supply Corporate Headquarters

Solid Waste Sites:
A Great Opportunity to Enhance the Florida Brownfields Program

An Example of a Solid Waste Site

State Resources Council

Friday, April 21, 2006
3:30 PM
Reed Hall

ADDENDUM A (4/21/06; 10:25 PM)
Amendments

Allan G. Bense
Speaker

Marty Bowen
Chair

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: State Resources Council
2 Representative(s) Benson offered the following:
3
4 **Amendment**
5 Remove line(s) 75-116 and insert:
6 (h) Designation of coastal high-hazard ~~coastal~~ areas and
7 the criteria for mitigation for a comprehensive plan amendment
8 in the coastal high hazard area as defined in s. 163.3178(9).
9 ~~, which for uniformity and planning purposes herein, are defined~~
10 ~~as category 1 evacuation zones.~~ The Coastal High Hazard Area is
11 the area below the elevation of the Category 1 storm surge line
12 as established by a Sea, Lake and Overland Surges from
13 Hurricanes (SLOSH) computerized storm surge model. ~~However,~~
14 ~~a~~Application of mitigation and the application of development
15 and redevelopment policies, pursuant to s. 380.27(2), and any
16 rules adopted thereunder, shall be at the discretion of local
17 government.
18 (9)(a) Local government may elect to comply with rules 9J-
19 5.012(3)(b)(6) and 9J-5.012(3)(b)(7), Florida Administrative
20 Code through the process provided in this section. A proposed
21 comprehensive plan amendment shall be found in compliance with

22 state coastal high hazard standards as provided in rule 9J-
23 5.012(3)(b)(6) and (7) if:
24 1. The adopted level of service for out-of-county
25 hurricane evacuation is maintained for the category 5 storm
26 event as measured by the Saffir-Simpson scale; or
27 2. A 12 hour evacuation time to shelter is maintained for
28 the category 5 storm event as measured by the Saffir-Simpson
29 scale and shelter space reasonably attributable to the
30 development contemplated by a proposed comprehensive plan
31 amendment is available; or
32 3. Appropriate mitigation to satisfy the provisions of
33 either subparagraph 1. or subparagraph 2. is provided.
34 Appropriate mitigation shall include, without limitation,
35 payment of money, contribution of land and construction of
36 hurricane shelters and transportation facilities. Required
37 mitigation shall not exceed the amount required for a developer
38 to accommodate impacts reasonably attributable to its
39 development. For those local governments that have not
40 established a level of service for out of county hurricane
41 evacuation by July 1, 2008, the level of service shall be no
42 greater than 16 hours for a category 5 storm event as measured
43 on the Saffir-Simpson scale.
44 (b) For those local governments that have not established
45 a level of service for out-of-county hurricane evacuation by
46 July 1, 2008, the level of service shall be no greater than 16
47 hours.
48 (c) This section shall become effective immediately and
49 apply to all local governments. No later than July 1, 2008,
50 local government shall amend their Future Land Use Map and
51 coastal management element to include the new definition of

52 coastal high hazard and to depict, the coastal high hazard area
53 on the Future Land Use map.
54
55

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1347 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: State Resources Council

2 Representative Williams offered the following:

3

4 **Amendment**

5 Remove line 403 and insert:

6 purposes and take and hold real

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: State Resources Council
2 Representative(s) Benson offered the following:
3
4 **Amendment**
5 Insert between line(s) 66 and 67:
6 (9) The department, or an agency, political subdivision,
7 or municipality described in subsection (3), may authorize sand-
8 filled tubes or similar structures proposed as the core of a
9 restored dune feature if the applicant meets the requirements of
10 this part and:
11 (a) Demonstrates that the United States Fish and Wildlife
12 Service has approved a habitat conservation plan that includes
13 the shoreline where each structure will be placed;
14 (b) Provides reasonable assurance that adequate sand cover
15 will be maintained over the structure such that the structure
16 will not interact with the beach dune system as rigid coastal
17 armoring or adversely affect marine turtle nesting and provides
18 for a responsible entity to conduct such maintenance; and
19 (c) Provides reasonable assurance that each structure will
20 be removed if the maintenance required by paragraph (b) proves
21 to be not feasible.

22

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

24 Remove line 11 and insert:

25 revoke certain authority; authorizing the installation of

26 certain structures under specified conditions; amending s.

27 163.3178, F.S.;

28