State Resources Council

Wednesday, April 19, 2006
8:30 AM
Reed Hall

Revised

Allan G. Bense
Speaker

Marty Bowen
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Resources Council

Start Date and Time:	Wednesday, April 19, 2006 08:30 am
End Date and Time:	Wednesday, April 19, 2006 10:30 am
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 743 CS Agricultural Usage Sales and Use Tax Exemptions by Bowen
HB 749 CS Sewage Treatment and Disposal Systems by Bowen
HB 1063 CS Regulation of Wells by Stansel
HB 1345 CS Saltwater Fisheries by Littlefield
HB 1533 Petroleum Contamination by Sands
HB 1557 CS Wekiva Onsite Sewage Treatment and Disposal System Compliance Grant Program by Brummer
HB 7133 CS Environmental Protection by Environmental Regulation Committee
HB 7159 CS Agriculture by Agriculture Committee
HB 7163 CS Environmental Permitting by Environmental Regulation Committee

NOTICE FINALIZED on 04/17/2006 16:05 by REARDON.BILLIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 CS Agricultural Usage Sales and Use Tax Exemptions
SPONSOR(S): Bowen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	10 Y, 0 N, w/CS	Kaiser	Reese
2) Finance & Tax Committee	6 Y, 0 N	Noriega	Diez-Arguelles
3) Fiscal Council	13 Y, 0 N	Noriega	Kelly
4) State Resources Council		Kaiser	Hamby
5)			

SUMMARY ANALYSIS

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

The Revenue Estimating Conference estimates that the provisions of this bill will result in a negative fiscal impact of $1.8 million to state government and $0.5 million to local governments in FY 2006-07, and of $2.8 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 electricity used directly and exclusively for the production or processing of agricultural products on a farm, and provides that farmers may use tax exempt diesel fuel in equipment other than farm vehicles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.0501, F.S., imposes a 6 percent sales tax on the total cost price of diesel fuel purchased for consumption, use, or storage by a trade or business. Section 212.0501(3), F.S., provides an exemption for diesel fuel used for residential purposes or on account of agricultural purposes as defined in s. 212.08(5), F.S., or when purchased or stored for resale. This exemption does not cover diesel fuel used in farm equipment or on a farm to process or produce farm products.

Section 212.0501(5), F.S., provides a sales tax exemption for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

According to the U.S. Department of Agriculture (USDA), the overall fuel bills for farmers increased by 47 percent between 2003 and 2005. The USDA projects that farmers' energy bills will increase by another $1.7 billion in 2006.[1] The following table reflects the exemption status of electricity for neighboring states in the southern United States:

State	Full Exemption	Partial Exemption
Louisiana	X	
South Carolina	X	
Tennessee	X*	
Georgia	X**	
Alabama	X***	
Mississippi		X****

*Effective 2007
**Irrigation systems only
***Heating poultry houses
****1.5 percent

Proposed Changes

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, which means that it is taxable.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

[1] www.tdo.com, Friday, February 24, 2006, "As energy bills climb, farmers' profits falter," by Pamela Brogan.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.0501(3), F.S., by expanding the meaning of diesel fuel exempt from sales tax.

Section 2. Amends s. 212.08(5)(e), F.S., by providing an exemption for electricity used directly and exclusively for production or processing of agricultural products on a farm, as long as it is separately metered.

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	(1.8m)	(2.8m)
State Trust	(Insignificant)	(Insignificant)
Total	(1.8m)	(2.8m)

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	(0.2m)	(0.3m)
Local Option	(0.2m)	(0.3m)
Total Local Impact	(0.5m)	(0.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers will save money by not having to pay a sales tax on electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Agriculture Committee adopted one amendment to the bill. This amendment clarified that the sales tax exemption only applies to electricity used directly and exclusively for the production or processing of agricultural products on a farm.

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

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agricultural usage sales and use tax exemptions; amending s. 212.0501, F.S.; excluding from application of the sales and use tax diesel fuel used in certain farming vehicles or for certain farming purposes; amending s. 212.08, F.S.; exempting from the sales and use tax electricity used for specified agricultural purposes; providing application; providing a conclusive presumption of taxable use under certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.--

(3) For purposes of this section, "consumption, use, or storage by a trade or business" does not include those uses of

24 diesel fuel specifically exempt on account of residential
25 purposes, or in any tractor, vehicle, or other equipment used
26 exclusively on a farm or for processing farm products on the
27 farm, no part of which diesel fuel is used in any licensed motor
28 vehicle on the public highways of this state ~~on account of~~
29 ~~agricultural purposes as defined in s. 212.08(5)~~, or the
30 purchase or storage of diesel fuel held for resale.
31 Section 2. Paragraph (e) of subsection (5) of section
32 212.08, Florida Statutes, is amended to read:
33 212.08 Sales, rental, use, consumption, distribution, and
34 storage tax; specified exemptions.--The sale at retail, the
35 rental, the use, the consumption, the distribution, and the
36 storage to be used or consumed in this state of the following
37 are hereby specifically exempt from the tax imposed by this
38 chapter.
39 (5) EXEMPTIONS; ACCOUNT OF USE.--
40 (e)1. Gas used for certain agricultural purposes.--Butane
41 gas, propane gas, natural gas, and all other forms of liquefied
42 petroleum gases are exempt from the tax imposed by this chapter
43 if used in any tractor, vehicle, or other farm equipment which
44 is used exclusively on a farm or for processing farm products on
45 the farm and no part of which gas is used in any vehicle or
46 equipment driven or operated on the public highways of this
47 state. This restriction does not apply to the movement of farm
48 vehicles or farm equipment between farms. The transporting of
49 bees by water and the operating of equipment used in the apiary
50 of a beekeeper is also deemed an exempt use.

51 2. Electricity used for certain agricultural
52 purposes.--Electricity used directly and exclusively for
53 production or processing of agricultural products on a farm is
54 exempt from the tax imposed by this chapter. This exemption
55 applies only if the electricity used for the exempt purposes is
56 separately metered. If the electricity is not separately
57 metered, it is conclusively presumed that some portion of the
58 electricity is used for a nonexempt purpose, and all of the
59 electricity used for such purposes is taxable.
60 Section 3. This act shall take effect July 1, 2006.

HB 749 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 749 CS Sewage Treatment and Disposal Systems
SPONSOR(S): Bowen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1874

DIRECTOR REFERENCE	ACTION	ANALYST	STAFF
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Kliner	Kliner
2) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
3) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Dixon	Dixon
4) State Resources Council		Kliner	Hamby
5)			

SUMMARY ANALYSIS

Florida's Department of Health (DOH) regulates the public health of public water systems and onsite sewage treatment systems. Current law provides for onsite sewage treatment permitting for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems in areas where publicly-owned or investor-owned sewerage systems are not available. When a central sewerage system is available, however, local governments may require connection of onsite systems to the central system within 365 days of the central system's availability.

This bill requires counties, municipalities, and sewer districts proposing to expand or build new central sewer facilities to provide information regarding:

- The history of onsite sewage treatment and disposal systems currently in use in the area;
- A comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment system that is approved by the DOH and that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development through the use of any onsite treatment and disposal systems approved by the DOH.

The bill authorizes a local government to grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the department as long as the onsite system is functioning properly and satisfying the conditions of the operating permit; however, the bill explicitly provides that a local government is not required to issue a variance under any circumstance. The bill also clarifies that a local government located within an area of critical state concern or located in an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation is not required to issue a variance under any circumstance, and nothing in this provision should be construed as limiting local government authority to enact ordinances under section 4 of ch. 99-395, Laws of Florida. It also clarifies the enforcement authority of the DOH when an onsite system has failed. Further, it increases the continuing education hours for septic tank contractors from 6 to 12.

This bill does not appear to have a fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government: The bill may increase workload of county, municipality, and sewer districts due to a new requirement to include certain information in reports regarding creation or expansion of central sewerage systems.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background – The Federal Clean Water Act and Wastewater Discharge
The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA)[1], established the basic framework for pollution control in the nation's water bodies. Its primary goal was to maintain clean and useful water bodies. By setting national standards and regulations for the discharge of pollution, the CWA was intended to restore and protect the health of the nation's water bodies.

The CWA established the foundation for wastewater discharge control in the United States. According to the Environmental Protection Agency (EPA), the CWA's primary objective is to "restore and maintain the chemical, physical and biological integrity of the nation's waters."[2] The CWA established a control program for ensuring that communities have clean water by regulating the release of contaminants into our country's waterways. Permits that limit the amount of pollutants discharged are required of all municipal and industrial wastewater dischargers under the National Pollutant Discharge Elimination System (NPDES) permit program. In addition, a construction grants program was set up to assist publicly owned wastewater treatment works build the improvements required to meet these new limits.

According to the EPA, over 75 percent of the nation's population is served by centralized wastewater collection and treatment systems. The remaining population uses septic or other onsite systems. Approximately 16,000 municipal wastewater treatment facilities are in operation nationwide. The CWA requires that municipal wastewater treatment plant discharges meet a minimum of 'secondary treatment'. Over 30 percent of the wastewater treatment facilities today produce cleaner discharges by providing even greater levels of treatment than secondary.

State Regulation for Sewage Systems
Statutory regulation of Florida county water and sewerage systems is found in ch. 153, F.S., which authorizes local governments to:

- Construct water supply systems and sewage disposal systems;
- Operate, manage, control, and make improvements to the systems;
- Issue bonds to pay for the costs associated with the construction of the systems; and
- Levy rates and fees to pay for the management of the systems.

[1] Public Law 92-500
[2] http://www.epa.gov/owm/primer.pdf

Chapter 180, F.S., authorizes municipalities to provide similar services. The construction and expansion of central sewerage systems are typically financed through bonds that are issued based on a guarantee of a given capacity over time. Knowing how many citizens may connect to a central system allows local governments to predict revenue which, in turn, assists local governments in securing funding from lending institutions for sewerage projects.

Part II of ch. 153, F.S., authorizes the creation of county water and sewer districts, which are special taxing districts created to reach and provide services to unincorporated areas in need of sewer and water services.

Chapter 381, F.S., authorizes the Florida Department of Health to regulate public water systems and onsite sewage treatment systems. Section 381.0065, F.S., regulates onsite sewage treatment and disposal systems, and requires a permit for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems in areas where publicly-owned or investor-owned sewerage systems are not available. Pursuant to s. 381.00655, F.S., if a publicly owned or investor-owned system is available, however, the owner of the central system may require connection of onsite systems to central sewerage systems within 365 days of the central system's availability.

To ensure that certain types of public facilities and services (e.g., sewer, water, and roads) needed to serve residents are constructed and made available contemporaneously with the impact of new development, lawmakers directed local governments to incorporate the concept of concurrency in the 1980s.[3]

Growth and Concurrency Obligations

A centerpiece of Florida's 1985 growth management legislation was concurrency.[4] At its core, concurrency is a requirement that development must not proceed unless infrastructure capacity and specific urban services are in place to service the new development. Concurrency was intended to address major infrastructure problems facing the state, especially increasing road congestion. As the state added approximately 300,000 residents each year during the 1970s and into the 1980s, a trend that has continued almost unabated for the last forty years, local and state road infrastructure became increasingly plagued by traffic congestion. In addition, other problems were apparent as well, including potable water availability, the need to treat wastewater to meet higher federal standards, and increasing problems relating to inadequate stormwater management.[5] Section 163.3180, F.S., mandates that sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation facilities, including mass transit, are subject to the concurrency requirement on a statewide basis.[6]

Central Wastewater Collection and Treatment[7]

The most common form of pollution control in the United States consists of a system of sewers and wastewater treatment plants. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to water bodies or land, or reused. Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility. These systems are usually reliable and consume no power. However, the slope requirements to maintain adequate flow by gravity may require deep excavations in hilly or flat terrain, as well as the addition of sewage pump stations,

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[3] Back to Basics on School Concurrency, David M. Powell, © 1999 Florida State University Law Review

[4] Florida Growth Management Act (Florida Statutes Chapter 163, Part II, 1985)

[5] A Review of Local Government Concurrency Practices in Florida, Dr. Timothy S. Chapin, Department of Urban and Regional Planning, Florida State University, Working Paper prepared for the DeVoe L. Moore Center, August, 2005

[6] Chapter 9J-5.0055, Florida Administrative Code provides more specific guidance to local governments as the state concurrency mandate is translated into local policies and procedures.

[7] EPA primer on municipal systems at http://www.epa.gov/owm/primer.pdf

which can significantly increase the cost of conventional collection systems. Manholes and other sewer appurtenances also add substantial costs to conventional collection systems.

Cities began to install wastewater collection systems in the late nineteenth century because of an increasing awareness of waterborne disease and the popularity of indoor plumbing and flush toilets. In the year 2000, approximately 208 million people in the U.S. were served by centralized collection.

Central wastewater treatment facilities utilize multiple treatment processes in order to address the multifaceted difficulties associated with certain waste types, including:

- The effects of biochemical oxygen demand, or BOD;
- Removal of pathogens;
- Processing of nutrient matter; and
- Removal and treatment of detergents, household cleaning aids, heavy metals, pharmaceuticals, synthetic organic pesticides and herbicides, industrial chemicals, and the wastes from their manufacture.

Preliminary Treatment

Preliminary treatment typically involves use of a screen to remove large floating objects, such as rags, cans, bottles and sticks that may clog pumps, small pipes, and down stream processes. The screens vary from coarse to fine and are constructed with parallel steel or iron bars with openings of about half an inch, while others may be made from mesh screens with much smaller openings. Some plants use devices known as comminutors or barminutors, which combine the functions of a screen and a grinder. These devices catch and then cut or shred the heavy solid and floating material.

Secondary Treatment

After the wastewater has been through Primary Treatment processes, it flows into the next stage of treatment called secondary. Secondary treatment processes can remove up to 90 percent of the organic matter in wastewater by using biological treatment processes. The "attached growth" process includes using trickling filters units, biotowers, and rotating biological contactors. Attached growth processes are effective at removing biodegradable organic material from the wastewater. In "suspended growth" processes, the microbial growth is suspended in an aerated water mixture where the air is pumped in, or the water is agitated sufficiently to allow oxygen transfer. The use of lagoons and transfers to land are also utilized if appropriate to the system process.

On-site Systems

Generally, septic systems are used to treat and dispose of relatively small volumes of wastewater, usually from houses and businesses that are located relatively close together. Septic systems are also called onsite wastewater treatment systems, decentralized wastewater treatment systems, on-lot systems, individual sewage disposal systems, cluster systems, package plants, and private sewage systems. Systems are considered "decentralized" because they do not involve central wastewater collection and treatment.

According to the EPA, the typical septic treatment system includes a septic tank, which digests organic matter and separates matter that floats (e.g., oils and grease) and settling solids from the wastewater. Soil-based systems discharge the liquid (effluent) from the septic tank into a series of perforated pipes buried in a leach field, leaching chambers, or other special units designed to slowly release the effluent into the soil or surface water, sometimes referred to as a drainage field.

Alternative systems use pumps or gravity to help septic tank effluent trickle through sand, organic matter (e.g., peat, sawdust), constructed wetlands, or other media to remove or neutralize pollutants like disease-causing pathogens, nitrogen, phosphorus, and other contaminants. Some alternative systems are designed to evaporate wastewater or disinfect it before it is discharged to the soil or surface waters.[8] The EPA developed guidelines to assist communities in establishing comprehensive management programs for onsite/decentralized wastewater systems to improve water quality and protect public health. The voluntary guidelines address the sensitivity of the environment in the community and the complexity of the system used. The five model management programs are:

- System inventory and awareness of maintenance needs.
- Management through maintenance contracts.
- Management through operating permits.
- Utility operation and maintenance.
- Utility ownership and management.[9]

According to the U.S. Census Bureau, approximately 26 million homes (one-fourth of all homes) in America are served by decentralized wastewater treatment systems. The Census Bureau reports that the distribution and density of septic systems vary widely by region and state, from a high of about 55 percent in Vermont to a low of around 10 percent in California. The New England states have the highest proportion of homes served by septic systems: New Hampshire and Maine both report that about one-half of all homes are served by individual systems. More than one-third of the homes in the southeastern states depend on these systems, including approximately 48 percent in North Carolina and about 40 percent in both Kentucky and South Carolina. More than 60 million people in the nation are served by septic systems. About one-third of all new development is served by septic or other decentralized treatment systems.[10] According to the Florida Department of Health, 31 percent of the Florida population is served by an 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.[11]

In Florida, the effect of waste disposal, whether through an on-site system or a centralized system, will implicate laws relating to the Total Maximum Daily Load Program (TMDL), which describes the amount of each pollutant a water body can receive without violating state water quality standards.

TMDL Program

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the states until numerous lawsuits were filed by environmental groups.[12]

Currently, DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body, phase two is monitoring and assessing to verify water quality impairments, phase 3 is the

[8] http://cfpub2.epa.gov/owm/septic/home.cfm - Frequently Asked Questions
[9] http://www.epa.gov/owm/septic/pubs/septic_guidelines_factsheet.pdf
[10] http://cfpub2.epa.gov/owm/septic/faqs.cfm?program_id=70#358
[11] http://www.doh.state.fl.us/environment/ostds/intro.htm
[12] Florida implements the TMDL program in s. 403.067, F.S.

development and adoption of TMDLs for waters verified as impaired, phase 4 is the development of basin management action plans to achieve the TMDL, and phase 5 is the implementation of the plan and monitoring of results.

In the 2005 Regular Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[13]

The law creates incentives to participate in the BMAP process and establishes a more direct linkage between the actions specified in the BMAP and activities regulated by DEP. Consistent with the existing provisions in s. 403.067, F. S., non-point sources are still managed through a non-regulatory, incentive-based program. However, in order to promote the same predictable pollution reduction performance among non-regulated entities as exists for permitted entities, the law provides the following:

- Non-regulated activities are not eligible for the incentives associated with the presumption of compliance with state water quality standards and the waiver of liability for pollution if adopted best management practices are not properly and timely implemented.
- Non-regulated activities that choose not to implement adopted best management practices must demonstrate compliance with applicable water quality standards.
- DEP is authorized to take enforcement actions where a party fails to properly implement best management practices or provide data demonstrating compliance with water quality standards.

Effect of Proposed Changes

The bill requires counties, municipalities, and sewer districts that propose to expand or build new central sewer facilities to provide information in a report, including:

- Available information from the Department of Health (DOH) on the history of onsite sewage treatment and disposal systems currently in use in the area; and
- A comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed sewerage system versus installing, operating and properly maintaining an onsite sewage treatment system, approved by the DOH that provides for the comparable level of environmental and health protection as the proposed central sewerage system and other factors deemed relevant by the local authority.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development through the use of any onsite treatment and disposal systems approved by the DOH.

The bill authorizes a local government to grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the DOH as long as the onsite system is functioning properly and satisfying the conditions of the operating permit; however, the bill explicitly provides that a local government is not required to issue a variance under any circumstance. The bill also clarifies that a local government located within an area of critical state concern or located in an area that was

[13] House of Representatives State Resources Council Staff Analysis for CS/HB 1839, 2005 Regular Session

designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation is not required to issue a variance under any circumstance, and nothing in this provision should be construed as limiting local government authority to enact ordinances under s. 4 of ch. 99-395, L.O.F. It also clarifies the enforcement authority of the DOH when an onsite system has failed. Further, it increases the continuing education hours for septic tank contractors from 6 to 12.

C. SECTION DIRECTORY:

Section 1. Amends s. 153.54, F.S., to require county to include certain information in reports.

Section 2. Amends s. 153.73, F.S., to require sewer districts to include certain information in reports.

Section 3. Amends s. 163.3180, F.S., to allow local governments to meet growth management concurrency requirements for "sanitary sewers" for new development with any DOH-approved onsite systems.

Section 4. Amends s. 180.03, F.S., to require municipalities to include certain information in reports.

Section 5. Amends s. 381.00655, F.S., to allow local governments to grant variances.

Section 6. Amends s. 318.0067, F.S., to clarify the enforcement authority of the department.

Section 7. Amends s.489.554, F.S., to increase continuing education hours.

Section 8. 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: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Indeterminate and dependent upon whether a local government grants a variance from requirement to connect to central sewerage systems.

2. Expenditures: Indeterminate as to scope. The bill may increase workload and costs of county, municipality, and sewer districts due to the requirement to include certain information in reports.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: This bill may benefit certain private sector owners of onsite sewerage systems that do not wish to connect to central sewerage treatment systems if a local government grants a variance.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision may apply because the bill requires counties and cities to provide certain information in reports prior to construction of a proposed sewerage system or the extension of an existing sewerage system that was not previously approved or not in a designated urban service area. Collecting such information may require the expenditure of funds. However, the bill may be exempt from the mandate requirements if the fiscal impact of the bill, on an aggregate basis for all cities and counties in the state, is less than $1.9 million over the long term. At this time, the fiscal impact of the bill is unknown.

   If the bill is not exempt from the mandates requirements imposed by Art. VII, section 18 of the Florida Constitution, the Legislature must determine that the law fulfills an important state interest and the bill must be approved by two–thirds of the House and Senate membership.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, the Committee on Environmental Regulation approved one amendment offered by the bill's sponsor. First, the amendment revises the requirements for the feasibility study. Local governmental units are still required to perform a feasibility study so long as the proposed sewerage system was not one previously approved for construction or expansion or is not in a designated urban service area. The details of the study were clarified to include:

- The age, condition, maintenance history of the onsite system being reviewed.
- A fiscal evaluation comparing connection to the central system as opposed to installation and operation of an onsite system that provides a comparable level of environmental and health protection as the central system.
- An evaluation to determine whether the density required accommodating the onsite system would meet the local government's comprehensive plan for density in the area and environmental protection of the local government's surface groundwater.
- Consideration of the local government's obligations for water body cleanup and protection under state or federal programs.

The amendment limits the "opt out" provision to an owner of a performance-based onsite sewage treatment and disposal system that is permitted by the department and which provides for treatment

meeting advanced secondary treatment standards. Such an owner shall not be required to connect to a publicly owned or investor-owned sewerage system as long as the onsite system is functioning properly and satisfying the conditions of the operating permit.

The amendment further limits the exemptions to the mandatory connection law in Florida by limiting the situations when a homeowner is not required to hook up to a central system, to wit:

- No exemption where area is subject to existing bond requirements or other financial commitments.
- No exemption when an area is subject to state or federal requirement or court order requiring hookup.
- No exemption in Monroe County or any municipality located therein.
- No exemption in an area located within a basin containing a water body listed pursuant to the federal clean water act.
- No exemption in an area that is designated in a local comprehensive plan as an urban service area.

On March 29, 2006, the Local Government Council adopted a strike-all amendment to the bill that removed the requirement for detailed feasibility studies and required inclusion of certain information in reports by cities, counties, and sewer districts. The bill also deleted the "opt-out" provision for property owners and authorized local governments to grant a variance to an owner of certain sewage treatment systems from requirements to connect to central systems. The amendment specifically provided that local governments, including those within areas of critical state concern, are not required to issue such variances under any circumstance.

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted an amendment to the bill that clarified the enforcement authority of the Department of Health when an onsite system has failed. It also increased the number of hours required for continuing education for septic tank contractors from 6 to 12.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to sewage treatment and disposal systems; amending s. 153.54, F.S.; requiring county commissions to include certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system in certain reports; amending s. 153.73, F.S.; requiring county water and sewer districts to conduct certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system prior to the levying of certain assessments; amending s. 163.3180, F.S.; authorizing local governments to use certain onsite sewage treatment and disposal systems to meet certain concurrency requirements; amending s. 180.03, F.S.; requiring municipalities to conduct certain studies for the construction of a new proposed sewerage system or the extension of an existing sewerage system prior to the adoption of certain resolutions or ordinances; amending s. 381.00655, F.S.;

24 authorizing local governments to grant variances from
25 connecting to a publicly owned or investor-owned sewerage
26 system under certain circumstances; providing
27 construction; amending s. 381.0067, F.S.; authorizing the
28 Department of Health or it agents to require repair or
29 replacement of drainage fields under certain
30 circumstances; requiring the department or its agents to
31 issue an order for the replacement of an onsite sewage
32 treatment and disposal system under certain circumstances;
33 providing construction; amending s. 489.554, F.S.;
34 increasing annual continuing education requirements for
35 septic tank contractors and master septic tank
36 contractors; providing an effective date.
37
38 Be It Enacted by the Legislature of the State of Florida:
39
40 Section 1. Subsection (5) is added to section 153.54,
41 Florida Statutes, to read:
42 153.54 Preliminary report by county commissioners with
43 respect to creation of proposed district.--Upon receipt of a
44 petition duly signed by not less than 25 qualified electors who
45 are also freeholders residing within an area proposed to be
46 incorporated into a water and sewer district pursuant to this
47 law and describing in general terms the proposed boundaries of
48 such proposed district, the board of county commissioners if it
49 shall deem it necessary and advisable to create and establish
50 such proposed district for the purpose of constructing,
51 establishing or acquiring a water system or a sewer system or

52 both in and for such district (herein called "improvements"),
53 shall first cause a preliminary report to be made which such
54 report together with any other relevant or pertinent matters,
55 shall include at least the following:
56 (5) For the construction of a new proposed sewerage system
57 or the extension of an existing sewerage system that was not
58 previously approved, the report shall include a study that
59 includes the available information from the Department of Health
60 on the history of onsite sewage treatment and disposal systems
61 currently in use in the area and a comparison of the projected
62 costs to the owner of a typical lot or parcel of connecting to
63 and using the proposed sewerage system versus installing,
64 operating, and properly maintaining an onsite sewage treatment
65 system that is approved by the Department of Health and that
66 provides for the comparable level of environmental and health
67 protection as the proposed central sewerage system and other
68 factors deemed relevant by the local authority.
69
70 Such report shall be filed in the office of the clerk of the
71 circuit court and shall be open for the inspection of any
72 taxpayer, property owner, qualified elector or any other
73 interested or affected person.
74 Section 2. Paragraph (c) is added to subsection (2) of
75 section 153.73, Florida Statutes, to read:
76 153.73 Assessable improvements; levy and payment of
77 special assessments.--Any district may provide for the
78 construction or reconstruction of assessable improvements as
79 defined in s. 153.52, and for the levying of special assessments

80 upon benefited property for the payment thereof, under the
81 provisions of this section.
82 (2)
83 (c) For the construction of a new proposed sewerage system
84 or the extension of an existing sewerage system that was not
85 previously approved, the report shall include a study that
86 includes the available information from the Department of Health
87 on the history of onsite sewage treatment and disposal systems
88 currently in use in the area and a comparison of the projected
89 costs to the owner of a typical lot or parcel of connecting to
90 and using the proposed sewerage system versus installing,
91 operating, and properly maintaining an onsite sewage treatment
92 system that is approved by the Department of Health and that
93 provides for the comparable level of environmental and health
94 protection as the proposed central sewerage system and other
95 factors deemed relevant by the local authority.
96 Section 3. Paragraph (a) of subsection (2) of section
97 163.3180, Florida Statutes, is amended to read:
98 163.3180 Concurrency.--
99 (2)(a) Consistent with public health and safety, sanitary
100 sewer, solid waste, drainage, adequate water supplies, and
101 potable water facilities shall be in place and available to
102 serve new development no later than the issuance by the local
103 government of a certificate of occupancy or its functional
104 equivalent. Prior to approval of a building permit or its
105 functional equivalent, the local government shall consult with
106 the applicable water supplier to determine whether adequate
107 water supplies to serve the new development will be available no

108 later than the anticipated date of issuance by the local
109 government of a certificate of occupancy or its functional
110 equivalent. A local government may meet the concurrency
111 requirement for sanitary sewer through the use of onsite sewage
112 treatment and disposal systems approved by the Department of
113 Health to serve new development.
114 Section 4. Subsection (3) is added to section 180.03,
115 Florida Statutes, to read:
116 180.03 Resolution or ordinance proposing construction or
117 extension of utility; objections to same.--
118 (3) For the construction of a new proposed sewerage system
119 or the extension of an existing sewerage system that was not
120 previously approved, the report shall include a study that
121 includes the available information from the Department of Health
122 on the history of onsite sewage treatment and disposal systems
123 currently in use in the area and a comparison of the projected
124 costs to the owner of a typical lot or parcel of connecting to
125 and using the proposed sewerage system versus installing,
126 operating, and properly maintaining an onsite sewage treatment
127 system that is approved by the Department of Health and that
128 provides for the comparable level of environmental and health
129 protection as the proposed central sewerage system and other
130 factors deemed relevant by the local authority. The results of
131 such a study shall be included in the resolution or ordinance
132 required under subsection (1).
133 Section 5. Paragraph (c) is added to subsection (2) of
134 section 381.00655, Florida Statutes, to read:

135 381.00655 Connection of existing onsite sewage treatment
136 and disposal systems to central sewerage system; requirements.--
137 (2) The provisions of subsection (1) or any other
138 provision of law to the contrary notwithstanding:
139 (c) A local government may grant a variance to an owner of
140 a performance-based onsite sewage treatment and disposal system
141 permitted by the department as long as the onsite system is
142 functioning properly and satisfying the conditions of the
143 operating permit. Nothing in this paragraph shall be construed
144 to require a local government to issue a variance under any
145 circumstance. A local government located within an area of
146 critical state concern or located in an area that was designated
147 as an area of critical state concern for at least 20 consecutive
148 years prior to removal of the designation shall not be required
149 to issue a variance under any circumstance, and nothing in this
150 paragraph shall be construed as limiting local government
151 authority to enact ordinances under s. 4 of chapter 99-395, Laws
152 of Florida.
153 Section 6. Section 381.0067, Florida Statutes, is amended
154 to read:
155 381.0067 Corrective orders; private and certain public
156 water systems and onsite sewage treatment and disposal
157 systems.--When the department or its agents, through
158 investigation, find that any private water system, public water
159 system not covered or included in the Florida Safe Drinking
160 Water Act (part VI of chapter 403) or onsite sewage treatment
161 and disposal system constitutes a nuisance or menace to the
162 public health, the department or its agents ~~it~~ may issue an

163 order requiring the owner to correct the improper condition. If
164 the improper condition relates to the drainage field of an
165 onsite sewage treatment and disposal system, the department or
166 its agents may issue an order requiring the owner to repair or
167 replace the drainage field. If an onsite sewage treatment and
168 disposal system has failed, the department or its agents shall
169 issue an order requiring the owner to replace the system. For
170 purposes of this section, an onsite sewage treatment and
171 disposal system has failed if the operation of the system
172 constitutes a nuisance or menace to the public health and the
173 system cannot be repaired.
174 Section 7. Subsection (2) of section 489.554, Florida
175 Statutes, is amended to read:
176 489.554 Registration renewal.--
177 (2) At a minimum, annual renewal shall include continuing
178 education requirements of not less than 12 ~~6~~ classroom hours
179 annually for septic tank contractors and not less than 18 ~~12~~
180 classroom hours annually for master septic tank contractors. The
181 18 ~~12~~ classroom hours of continuing education required for
182 master septic tank contractors may include the 12 ~~6~~ classroom
183 hours required for septic tank contractors, but at a minimum
184 must include 6 classroom hours of approved master septic tank
185 contractor coursework.
186 Section 8. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 749 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 Bowen offered the following:
3
4 **Amendment**
5 On lines 67, 94, & 129, after system
6 insert:
7 ; consideration of the local government's obligations or
8 reasonably anticipated obligations for water body cleanup and
9 protection under state or federal programs including
10 requirements for water bodies listed under s. 303(d) of the
11 Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.;
12
13

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 749 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 Bowen offered the following:
3
4 **Amendment**
5 On line 152, after the period, insert:
6 A local government located in any of the following areas shall
7 not be required to issue a variance under any circumstance:
8 1. An area of critical state concern.
9 2. An area that was designated as an area of critical
10 state concern for at least 20 consecutive years prior to removal
11 of the designation.
12 3. An area in the South Florida Water Management district
13 west C-11 basin that discharges through the S-9 pump into the
14 Everglades.
15
16
17

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 749 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 Bowen offered the following:
3
4 **Amendment**
5 Remove lines 162-173 and insert:
6
7 public health, or significantly degrades the groundwater or
8 surface water, the department or its agents ~~it~~ may issue an
9 order requiring the owner to correct the improper condition. If
10 the improper condition relates to the drainage field of an
11 onsite sewage treatment and disposal system, the department or
12 its agents may issue an order requiring the owner to repair or
13 replace the drainage field. If an onsite sewage treatment and
14 disposal system has failed, the department or its agents shall
15 issue an order requiring the owner to replace the system. For
16 purposes of this section, an onsite sewage treatment and
17 disposal system has failed if the operation of the system
18 constitutes a nuisance or menace to the public health, or
19 significantly degrades the groundwater or surface water, and the
20 system cannot be repaired.
21

HB 1063 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 CS Regulation of Wells
SPONSOR(S): Stansel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	8 Y, 0 N	Lotspeich	Lotspeich
2) Military & Veteran Affairs Committee	7 Y, 0 N, w/CS	Marino	Cutchins
3) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Dixon	Dixon
4) State Resources Council		Lotspeich	Hamby
5)			

SUMMARY ANALYSIS

Committee Substitute for House Bill 1063 addresses several issues relating to water well contractors. Specifically, the committee substitute:

- Amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator when dealing with other appropriately licensed contractors for the electrical, fencing, construction of a pump house or vault, and landscaping work that is necessary to complete construction, repair, or abandonment of certain water wells.
- Amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived if the contractor has obtained his first license within 180 days before the end of the biennial licensing cycle. It further creates a fee structure for the continuing education requirements for license renewal and allows the delegation of responsibilities for such requirements to the water management districts or for contracting the responsibilities to a private entity.
- Provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted a 180-day extension upon return from those same orders to meet the license renewal requirements without penalty.
- Imposes a fine up to $5,000 on persons who drill water wells without a license.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This committee substitute allows certain well water contractor licensees to avoid paying late fees and penalties associated with license renewal under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Law

Water Well Contractor License
Part III of Chapter 373, F.S., currently regulates the construction, repair, and abandonment of water wells. Pursuant to s. 373.302, F.S., the Legislature has found that "the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment." Accordingly, s. 373.306, F.S., prohibits the construction, repair or abandonment of water wells that are inconsistent with Part III of Chapter 373, F.S.

A permit is required for the construction, repair, or abandonment of any water well.[1] In addition, anyone who wants to engage in business as a water well contractor must be licensed by the water management district. The licensure requirements for water well contractors are set forth in s. 373.323, F.S. In addition, the Department of Environmental Protection (DEP) has adopted rules that set forth the requirements for water well contractor licensure.[2] An applicant for a water well contractor license must submit an application to the water management district. The applicant must be at least 18 years of age and have a minimum of two years experience in the construction, repair, and abandonment of water wells.[3] The applicant is required to take and pass an examination that has been prepared by the DEP. The examination is required to test: (1) the applicant's knowledge of rules and regulations of Part III of Chapter 373, F.S., (2) the applicant's ability to construct, repair, and abandon water wells, and (3) the applicant's ability to supervise, direct, manage, and control the contracting activities of a water well contracting business.[4] The water management district is required to issue a water well contractor license to any qualified applicant who passes the examination, pays the required application fee, and who completes at least 12 hours of approved course work.[5]

Renewals
Section 373.324, F.S., addresses issues relating to the renewal of water well contractor licenses. The DEP has adopted rules establishing a procedure for the biennial review of all licenses, and each water management district has incorporated the DEP rules by reference.[6] The renewal requires the submittal of an application for renewal and proof of the completion of 12 classroom hours of continuing education during the biennial cycle. Any license not renewed at the end of the biennial cycle automatically reverts to an inactive status. Such inactive licenses can be reactivated only by meeting the requirements of s. 373.325, F.S., which require the payment of renewal and penalty fees. A license that has been inactive for more than one year can be reactivated only by applying for licensure under the provisions of s. 373.323, F.S.

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[1] s. 373.313, F.S.
[2] Rule 62-531, Florida Administrative Code
[3] s. 373.323(3), F.S.
[4] s. 373.323(4), F.S.
[5] s. 373.323(5), F.S.
[6] Rule 62-531.330, Florida Administrative Code

Penalties
Under s. 373.336, F.S., it is unlawful for any person to practice water well contracting without an active license. Any person found to be in violation of this provision is guilty of a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083, F.S.

Effect of Proposed Changes

Water Well Contractor
Committee Substitute for House Bill 1063 amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator when dealing with other appropriately licensed contractors for additional incidental work, such as electrical, fencing, construction of a pump house or vault, and landscaping that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less.

This provision allows a licensed water well contractor to ensure all primary and incidental work on a water well project is completed without the requirement of contracting/employing a general contractor under ch. 489, F.S. to supervise the project.

License Renewal
According to statute, it appears a license can be in one of three states: active, inactive, and expired. An active license is a license that is issued to a licensee that has completed all tests (in the case of a new or initial license) or continuing education (in the case of a renewal), and has paid all associated fees by a water management district. A licensee that misses the deadline for continuing education and renewal fees will have a license that lapses into inactive status. The licensee in that case may still convert their license to active status after meeting regular renewal requirements and paying all associated fees, to include penalties and late fees.

However, if a license remains on inactive status for too long, it will expire. The licensee in that situation will need to reapply for a new license and pay the non-refundable application fee, as well as take the coursework and tests again required for an initial or new license.

This committee substitute amends the license renewal provisions of s. 373.324, F.S., to direct the department to establish a fee structure (not to exceed $20 per credit hour) for continuing education requirements. It allows the department to delegate the responsibilities of these requirements to the water management districts or to contract with private entities for such responsibilities. It further requires that the continuing education requirements for a license renewal be waived if the contractor obtained his first license within 180 days before the end of the biennial licensing cycle.

This committee substitute also provides that a servicemember, as defined in s. 250.01, F.S., or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted an active license extension for up to 180 days after the servicemember's return from those same orders to his or her Florida residence. During the 180-day extension, the eligible licensee may meet the statutory renewal requirements without penalty. The granting of the extension does not waive the requirement for the licensee to meet all renewal requirements to maintain an active license.

This provision appears to allow for an extension under any situation in which a servicemember or a servicemember and his or her spouse find themselves unable to renew their water well contractor license in a timely manner if the servicemember is on military orders. In other words, the extension may be granted if the servicemember is temporarily deployed on military orders or if the servicemember is permanently moved to a new duty station on military orders. This provision also stipulates that in order for a licensee to be granted a waiver under this subsection, the servicemember must provide military orders or a letter from his or her commander as proof of eligibility.

Penalties
In addition to the penalties currently provided in s. 373.336, F.S., the bill imposes a fine up to $5,000 on persons who drill water wells without a license. The policies and procedures for the enforcement of such fines are to be established by the DEP.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.323, F.S., to provide that a licensed water well contractor may facilitate work, with other licensed contractors, that is incidental to the water well construction, repair, or abandonment.

Section 2. Amends s. 373.324, F.S., to address provisions relating to fees, continuing education requirements and the renewal of licenses for water well contractors.

Section 3 Amends s. 373.333, F.S., to provide penalties for persons drilling wells without a license.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

There do not appear to be any constitutional issues with this committee substitute.

B. RULE-MAKING AUTHORITY:

This committee substitute does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Committee on Military & Veteran Affairs approved two amendments to this bill.

- Amendment #1 clarifies that a licensed water well contractor's responsibility is to act as a facilitator and not as a prime contractor when dealing with other appropriately licensed contractors for the electrical, fencing, construction of a pump house or vault, and landscaping work that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less. The amendment also clarifies that nothing in this part of statute authorizes a licensed water well contractor to perform any services or work for which a license under ch. 489 is required.

- Amendment #2 provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted a 180-day extension upon return from those same orders to meet the license renewal requirements without penalty. However, the extension is waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.

On April 11, 2006, the Agriculture and Environment Appropriations Committee approved two amendments to this bill:

- Amendment #1 creates a fee structure for continuing education requirements. It also allows for delegation of these requirements to the water management districts or for contracting out the responsibilities for them.

- Amendment #2 strikes the exception for the extension being waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.

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 regulation of wells; amending s.
8 373.323, F.S.; authorizing licensed water well contractors
9 to facilitate work by certain licensed contractors under
10 certain circumstances; providing a definition; amending s.
11 373.324, F.S.; requiring the Department of Environmental
12 Protection to establish by rule a fee to cover the cost of
13 implementing the continuing education requirements;
14 providing a maximum fee amount; authorizing the department
15 to delegate certain authority to the water management
16 districts; authorizing the department or a water
17 management district to contract with a private entity to
18 carry out certain responsibilities relating to continuing
19 education; waiving continuing education requirements for
20 license renewal of certain water well contractors;
21 providing water well contractor license extensions for
22 certain servicemembers and their spouses under certain
23 circumstances; providing for exemption from certain costs

24 or fees under certain circumstances; amending s. 373.333,
25 F.S.; increasing the amount of the administrative fine a
26 water management district may impose for certain water
27 well contracting violations; amending s. 373.336, F.S.;
28 providing fines for persons or entities drilling a water
29 well without a license or contracting with unlicensed
30 water well contractors for water well services; requiring
31 the department to establish policies and procedures for
32 the enforcement of the fines; providing an effective date.
33
34 Be It Enacted by the Legislature of the State of Florida:
35
36 Section 1. Subsection (11) is added to section 373.323,
37 Florida Statutes, to read:
38 373.323 Licensure of water well contractors; application,
39 qualifications, and examinations; equipment identification.--
40 (11) A licensed water well contractor may facilitate the
41 performance of additional work by an appropriately licensed
42 contractor that is incidental to the construction, repair, or
43 abandonment of a water well. For purposes of this subsection,
44 "incidental" work is limited to the electrical connection of a
45 pump, connecting a well to a residential dwelling, constructing
46 a pump house or pump vault of 100 square feet or less,
47 constructing a nonstructural well slab of 100 square feet or
48 less, fencing, and landscaping. Nothing in this part shall
49 authorize a licensed water well contractor to perform any
50 services or work for which a license under chapter 489 is
51 required.

52 Section 2. Subsection (3) of section 373.324, Florida
53 Statutes, is amended, and subsection (7) is added to that
54 section, to read:
55 373.324 License renewal.--
56 (3) The department shall prescribe by rule the method for
57 renewal of a license, which shall include continuing education
58 requirements of not less than 12 classroom hours for each
59 renewal cycle. In addition to the fees provided in s. 373.329,
60 the department by rule shall establish a fee not to exceed $20
61 per credit hour to be paid by the licensee for the cost of
62 implementing the continuing education requirements of this
63 subsection. The fee shall be based on the actual costs incurred
64 in administering the responsibilities related to the continuing
65 education requirements. The department may delegate to the water
66 management districts, or the department or a water management
67 district may contract with a private entity to carry out, the
68 responsibilities related to the continuing education
69 requirements. However, if a water well contractor has received
70 his or her first license within 180 days before the end of the
71 license biennium, the continuing education requirements shall be
72 waived for the licensee's first renewal cycle.
73 (7) Notwithstanding the renewal requirements of subsection
74 (3) and the provision under s. 250.4815, any active water well
75 contractor license issued under this part to a servicemember as
76 defined in s. 250.01 or his or her spouse, both of whom reside
77 in the state, shall not become inactive while the servicemember
78 is serving on military orders that take him or her over 35 miles
79 from his or her residence, and the license shall be considered

80 an active license for up to 180 days after the servicemember
81 returns to his or her residence in the state. If the license
82 renewal requirements are met within the 180-day extension
83 period, the servicemember or his or her spouse shall not be
84 charged any additional costs above the normal license fees,
85 including, but not limited to, late fees or delinquency fees.
86 Nothing in this subsection shall be construed to waive renewal
87 requirements such as applying, continuing education, and all
88 associated fees. The servicemember must present to the water
89 management district issuing the license a copy of his or her
90 official military orders or a written verification from the
91 servicemember's commanding officer before the end of the 180-day
92 period in order to qualify for the extension.
93 Section 3. Paragraph (c) of subsection (5) of section
94 373.333, Florida Statutes, is amended to read:
95 373.333 Disciplinary guidelines; adoption and enforcement;
96 license suspension or revocation.--
97 (5) When the water management district finds a person
98 guilty of any of the grounds set forth in subsection (4), it may
99 enter an order imposing one or more of the following
100 disciplinary actions:
101 (c) Imposition of an administrative fine not to exceed
102 $5,000 ~~$1,000~~ for each count or separate offense.
103 Section 4. Subsection (4) is added to section 373.336,
104 Florida Statutes, to read:
105 373.336 Unlawful acts; penalties.--
106 (4) Persons or entities drilling a water well without a
107 license or contracting with an unlicensed water well contractor

108 for water well services shall be subject to a fine of up to
109 $5,000 for each violation. Policies and procedures for the
110 enforcement of the fines shall be established by the department.
111 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1345 CS Saltwater Fisheries
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 2490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	10 Y, 0 N	Lotspeich	Lotspeich
2) Agriculture & Environment Appropriations Committee	12 Y, 1 N, w/CS	Davis	Dixon
3) State Resources Council		Lotspeich RDL	Hamby
4)			
5)			

SUMMARY ANALYSIS

The bill addresses several issues with regard to fees and penalties relating to taking blue crabs and spiny lobsters. Specifically, with regard to blue crabs the bill:

- amends s. 370.135, F.S., to create new "endorsement fees" for blue crabs;
- requires that $25 of the new endorsement fees must be used for the trap retrieval program;
- requires an annual fee of 50 cents for each blue crab trap tag;
- allows the FWCC to establish by rule an amount of equitable rent that may be recovered from trap owners to the state for the enhanced access to its natural resources;
- requires that all the funds from fees, penalties and equitable rent relating to the blue crab program be deposited in the Marine Resources Conservation Trust Fund;
- provides penalties for untagged traps.

With regard to the spiny lobster, the bill provides additional administrative penalties for any person forging or bartering spiny lobster trap tags or certificates during any period of time while a trap number is under suspension or revocation.

The bill amends s. 370.143, F.S., relating to the trap retrieval program, to add traps for blue crabs and black sea bass to the types of traps that fall under the current trap retrieval program for spiny lobsters and stone crabs.

The bill allows the Fish and Wildlife Conservation Commission to waive replacement trap tag fees for the commercial blue crab, commercial stone crab, and commercial spiny lobster fisheries, in the event of a declared emergency by the Governor.

The bill waives all blue crab fishery fees for the 2006-2007 license year, and appropriates $132,000 from the Marine Resources Conservation Trust Fund in order to pay for the program, tags and administrative costs associated with the blue crab management effort and its advisory board.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fees and penalties relating to the taking of blue crabs and spiny lobsters.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Blue Crabs

Background

The blue crab supports an important commercial trap fishery in the State of Florida. During the 1998 Session, concerns about the rapidly increasing number of traps in the blue crab fishery resulted in a legislative moratorium on the issuance of new blue crab endorsements.[1] Last year, the Fish and Wildlife Conservation Commission (FWCC) extended that moratorium until July 1, 2006, to allow for the completion and adoption of the blue crab limited entry endorsement program.[2]

Problems in the blue crab fishery include the seasonal crowding of traps in confined waterways, lost traps and bycatch, endorsements that are unused, and conflict between hard shell blue crab producers and soft shell blue crab producers.

During 2003, the FWCC Division of Marine Fisheries Management (MFM) assembled an industry advisory board, the *ad hoc* Blue Crab Advisory Board (BCAB), to develop an effort management program. The primary recommendation of the BCAB was to develop an effort management program for the blue crab fishery before the moratorium on issuing endorsements is lifted in July 2006. The BCAB recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and creating separate endorsements for each. Hard shell blue crabs are sold on the live market or to packing houses and have a minimum size limit of five inches carapace length. Soft shell crabs are peeler crabs that are allowed to molt in shedding tanks, are sold in the soft shell condition (usually frozen), and do not have a minimum size limit.

The plan endorsed by the BCAB creates a limited access fishery that would limit the total number of participants in the fishery, with an equal number of traps available to each endorsement. Each qualified hard shell crab endorsement can receive up to 600 trap tags, which can be used anywhere, and an additional 400 for offshore waters of the Gulf of Mexico. Each qualified soft shell crab endorsement can receive up to 400 trap tags with an additional 250 tags for a subsequent qualified endorsement.

Once the program has been established, individuals wishing to enter the fishery would be required to purchase an existing blue crab endorsement and its associated traps from someone wishing to exit the fishery. Each trap will be required to have a tag, with the endorsement holder's number firmly attached. Trap tags would be supplied by the FWCC. The Commissioners approved this plan in April 2005, to become effective July 1, 2006.[3]

Based upon public testimony at the April 2005 meeting, the Commissioners directed staff to investigate mechanisms to accommodate fishers affected by the 1995 Net Limitation Constitutional Amendment (Article X, Section 16, Florida Constitution) who have a blue crab endorsement but no qualifying

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[1] Subsection 370.135(2)(a), F.S.
[2] Rule 68B-45.004(9)(b)
[3] Rule 68B-45.007, F.A.C.

landings, and in other fisheries in which blue crab bycatch is permitted. This affected several thousand commercial fishers who used this type of gear to harvest inshore species such as mullet. In 2000, a limited entry program for the stone crab fishery was implemented that issued trap tag certificates based upon reported commercial stone crab landings. Bona fide displaced netters, who would not have qualified to be in the program, were awarded a certain amount of trap certificates as compensation for the loss of their net gear. Many of these displaced net fishers also possess a blue crab endorsement, but do not have any reported blue crab landings during the qualifying years. These endorsements are free and have been renewed over the years as an additional fishery option should their principal fishery fail. Staff developed language by which qualified displaced netters could be issued a non-transferable blue crab endorsement that would make them eligible for up to 100 trap tags.

A blue crab bycatch in shrimp trawls (200 pounds per day) has been allowed since 1993, and a nominal amount of blue crabs have historically been landed as bycatch from stone crab traps. Under the new blue crab limited entry program, a harvester must possess a blue crab endorsement to harvest, possess, and sell commercial quantities of blue crab. Staff developed language establishing an incidental take endorsement to allow the incidental harvest, possession, and sale of 200 pounds of blue crabs from shrimp trawls and stone crab traps. This incidental take endorsement has precedence in the stone crab fishery.[4]

The BCAB recommended setting a fee for the hard shell blue crab endorsement at $125; a fee for the soft shell blue crab endorsement of $250, a fee for the displaced-netters blue crab endorsement of $125, and a fee for the incidental take endorsement of $25. The BCAB recommended that $25 of each endorsement fee, except for the incidental take endorsement, would be used for the trap retrieval program administered by FWCC in cooperation with the commercial fishing industry. Additionally, the BCAB recommended a trap tag fee $0.50 per tag.

The Commissioners approved all of the BCAB's fee recommendations and requested that they be presented to the 2006 Legislature.

Current Law

Section 370.135. F.S., currently addresses the regulatory requirements relating to the commercial taking of blue crabs using traps. Pursuant to the provisions of subsection 370.135(1), F.S., blue crabs may not be taken using a trap unless the person, firm or corporation setting the trap holds a valid saltwater products license issued by the FWCC pursuant to s. 370.06, F.S., and the trap has a current state number permanently attached to the buoy used to mark the trap.

Under subsection 370.135(1), F.S., it is a third degree felony for anyone to willfully molest any trap, line or buoy that belongs to another without the express written permission of the trap owner. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., (general penalties for violations of FWCC rules), shall lose all saltwater fishing privileges for a period of 24 calendar months.

It is also unlawful under this subsection to remove the contents of another harvester's trap or to take possession of such a trap. Such removal or possession constitutes a theft. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., shall lose all saltwater fishing privileges for a period of 24 calendar months.

In addition, any person receiving a judicial disposition for any violation of subsection 370.135(1), F.S., or s. 370.1107, F.S., (unlawful possession of licensed saltwater fisheries traps) shall be assessed an administrative penalty of up to $5,000.

[4] Subsubparagraph 370.13(1)(b)6(c), F.S.

Spiny Lobster

Background

The spiny lobster trap certificate program was established by statute (s. 370.142, F.S.) in 1990 to "stabilize the fishery by reducing the total number of traps, which should increase the yield per trap and maintain or increase overall catch levels". The program was implemented in response to rapid growth of the fishery and associated problems of "increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution. . . ." The number of traps in the fishery was capped at 750,327 and fishers were allocated their share of allowable traps on the basis of their historical landings.[5] Each year fishers receive one trap tag for each trap certificate on record in their file. Only lobster traps bearing a trap tag issued by the FWCC may be fished. A fisher may buy or sell trap certificates on the open market.

Current Law

Section 370.14, F.S., addresses the regulatory requirements for taking spiny lobsters (crawfish). Under this section, any person taking or attempting to take a crawfish with a trap in commercial quantities must obtain and exhibit a crawfish trap number as required by the FWCC. Under subsection. 370.142(2), F.S., the FWCC has established a "trap certificate program" for the spiny lobster fishery. Each person who holds a saltwater products license who uses traps for taking spiny lobsters is required to have a certificate on record for each trap that is used. In addition, each trap must have affixed to it an annual tag issued by the FWCC.

Paragraph 370.142(2)(c), F.S., provides for prohibitions and penalties regarding violations relating to the spiny lobster trap certificate program. Specifically, it is unlawful for a person to:

- possess or use a spiny lobster trap without the required certificate and tag;
- molest a trap or remove its contents;
- forge a trap certificate of tag;
- barter, trade, sell, supply a trap certificate or tag.

This paragraph provides for civil penalties ranging from $1,000 to $5,000 and suspensions and revocations of the holders trap number. It also provides for a third degree felony for any person who violates the forging or bartering provisions during the period of time that a trap number is under suspension.[6]

Trap Retrieval Program

Background

Spiny lobster season ends on March 31 each year; stone crab season ends on May 15. Fishers are required to remove their traps from the water during the closed season. Traps may be left in the water at the close of season for several reasons: (1) they were moved by currents or dragged by boats and lost to the owner; (2) the owner is either unable to bring them in, e.g. because of illness, a mechanical problem with his boat, etc., or chooses to not retrieve them; or (3) the owner may intend to continue fishing. Traps left in the water pose two basic problems: they continue to catch product, much of which dies, and they have the potential to be illegally fished. Also, traps that are left in the water can end up as "derelict traps" or "trap debris", swept shoreward by currents into mangrove forests, shallow water flats, grass beds and marsh areas.

While spiny lobster and stone crab have long had specific closed seasons, blue crab has been a year-round fishery until recently. In 2003, the Commission closed the blue crab fishery in an area north and west of the Suwannee River seaward of a line three nautical miles from shore for the 14 days prior to stone crab season. In 2004, the 14-day closure zone was extended to the entire Gulf Coast, seaward

[5] Rule 68E-18, F.A.C.
[6] Subsubparagraph 370.142(2)(c)6a, F.S.

of the three-nautical-mile line. The principal reason for excluding blue crab traps from waters beyond the three mile line is to preclude the possibility that such traps could be used to collect stone crab immediately prior to the beginning of the stone crab fishing season.

In 2003, the Commission adopted guidelines for trap retrieval and trap debris removal.[7] Definitions apply to spiny lobster, stone crab, and blue crab traps, and a closed season now exists for all three fisheries.

Current Law

Section 370.143, F.S., authorizes the FWCC to implement a trap retrieval program for retrieval of spiny lobster and stone crab traps remaining in the water during the closed season for each species. Trap owners are charged a retrieval fee of $10 per trap. Traps recovered under this program become the property of the FWCC or its contract agent and must be destroyed or resold to the original owner. The revenue from retrieval fees is deposited into the Marine Resources Conservation Trust Fund and is used solely for operation of the trap retrieval program.

Payment of all assessed retrieval fees must be received by the FWCC prior to renewal of the trap owner's saltwater products license and stone crab and or crawfish endorsements. Retrieval fees assessed under this program stand in lieu of other penalties imposed for such trap violations.

EFFECT OF PROPOSED CHANGES

Blue Crabs

The bill amends s. 370.135, F.S., to create new "endorsement fees" for blue crabs. The taking of blue crabs is currently regulated by the FWCC under Rule Chapter 68B-45, F.A.C. The new fees are:

- $125 for taking hard-shell blue crabs;
- $250 for taking soft-shell blue crabs;
- $125 for a nontransferable blue crab endorsement;
- $25 for an incidental take blue crab endorsement.

The bill requires that $25 of the new endorsement fees for the hard-shell, soft-shell and nontransferable blue crab endorsement be used for the trap retrieval program.

The bill also requires an annual fee of 50 cents for each blue crab trap tag. The fee for replacement tags that have been lost or damaged is also 50 cents plus the cost of shipping. The Commission may also waive this fee if the Governor declares a state of emergency.

All of these fees listed above are waived for the 2006-2007 license year for those qualifying by September 30, 2006.

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources. In making a decision whether to impose the equitable rent and in determining the amount charged, the FWCC is permitted to consider the amount of revenues generated each year by endorsement fees, trap tags, replacement tags, trap retrieval fees, and the continued economic viability of the commercial blue crab industry.

All the funds from fees, penalties and equitable rent relating to the blue crab program are to be deposited in the Marine Resources Conservation Trust Fund. No more than 50 percent of the revenues may be used for the operation and administration of the blue crab program.

[7] Rule 68B-55, F.A.C.

The bill provides penalties for untagged blue crab traps. The first violation of the requirements for trap tags will subject the violator to an administrative penalty of up to $1,000 and the blue crab fishing privileges may be suspended for the remainder of the current license year. Subsequent violations will subject the violator to increasing administrative penalties up to $5,000 and increasing terms of suspension of blue crab fishing privileges.

The bill sets administrative penalties and provides for a third degree felony for conviction of violating commission rules regarding blue crab trap theft and molestation, and for bartering trading, selling or leasing and forging trap tags. Any person convicted of fraudulently reporting the actual value of transferred blue crab endorsements may have his/her blue crab endorsements automatically suspended or revoked by the FWCC. If an endorsement is permanently revoked, the FWCC must also permanently deactivate the endorsement holder's blue crab trap tag accounts. All traps subject to a suspended or revoked endorsement must be removed from the water within 15 days from notice by the FWCC. Failure to do so will result in a 6 month extension of the suspension or revocation.

The bill appropriates $132,000 from the Marine Resources Conservation Trust Fund in order to pay for the program, tags and administrative costs associated with the blue crab management effort and its advisory board.

Spiny Lobster

The bill provides that any person who receives a judicial disposition other than an acquittal or dismissal for a violation of the prohibitions against forging or bartering spiny lobster trap tags or certificates (Subparagraph 370.142(2)(c)5, F.S.) during any period of time while a trap number is under suspension or revocation shall be assessed an administrative penalty of up to $5,000, and the person's crawfish endorsement may be suspended for up to 24 months.

The bill provides the FWCC may waive trap tag replacement fees if the Governor declares a state of emergency.

Trap Retrieval Program

The bill amends s. 370.143, F.S., relating to the trap retrieval program, to add traps for blue crabs and black sea bass to the types of traps that fall under the current program for spiny lobsters and stone crabs.

Marine Resources Conservation Trust Fund

Purposes of this trust fund are expanded to include funding for the stone crab, blue crab, and spiny lobster commercial trap programs, including the trap retrieval program. The trust fund is also designated as the depository of any fees or fines collected from these programs.

C. SECTION DIRECTORY:

Section 1. Amends s. 370.0603, F.S., to specify additional purposes and uses the Marine Resources Conservation Trust Fund.

Section 2. Amends s. 370.13, F.S., to address fees relating to stone crab fishery programs.

Section 3. Amends s. 370.135, F.S., to address fees, penalties, and equitable rent relating to blue crab traps.

Section 4. Amends s. 370.142, F.S., to address fees and penalties relating to the spiny lobster trap certificate program.

Section 5. Amends s. 370.143, F.S., to add blue crabs and black sea bass to the trap retrieval program.

Section 6. Provides appropriations for the blue crab trap tag program and the Blue Crab Advisory Board.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 06-07 Amount / FTE	FY 07-08 Amount / FTE	FY 08-09 Amount / FTE
Marine Resources Consv TF			
Blue Crab Endorsements	$ 138,500	$138,500	$ 138,500
Trap Tags	-0-	430,275	430,275
Total	$ 138,500	$ 568,775	$ 568,775

2. Expenditures:

a. Licensing & Permitting-Expenses (Trap Tag costs and Program costs)	$ 120,000	$ 120,000	$ 120,000
b. Marine Fisheries Mgt-Expenses (Operations & Advisory Board)	12,000	12,000	12,000
c. Trap retrieval, research, public education, enforcement activities	-0-	436,775	436,775
Total	$ 132,000	$ 568,775	$ 568,775

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial blue crab fishers will be assessed an annual fee for the blue crab endorsement ($125 for hard shell crab endorsement; $250 for a soft shell crab endorsement; $125 for a non-transferable blue crab endorsement; or $25 for the blue crab incidental take endorsement) and $0.50 for each trap tag received.

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 modifies an existing third degree felony relating to blue crab trap molestation by moving the offense to a different subsection, providing additional direction of its scope, and by making the penalty for violation of commission rule. Typically, the CJIC estimates a third degree felony with a Level 1 ranking on 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:

   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:

   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. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted six amendments, outlined as follows:

- Allows FWCC to waive replacement trap tag fees for commercial blue crab, stone crab, and spiny lobster fisheries, in the event of a declared emergency by the Governor. (3 separate amendments)
- Waives blue crab fishery fees for the 2006-2007 license year.
- Clarifies existing language regarding the appropriation of funds.
- Specifies use of the Marine Resources Conservation Trust Fund for the stone crab, blue crab, and spiny lobster programs, including trap retrieval, and provides this trust fund as the depository of any fees or fines collected from these programs.

This analysis is drawn to the bill as amended.

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
7 A bill to be entitled
8 An act relating to saltwater fisheries; amending s.
9 370.0603, F.S.; authorizing use of the Marine Resources
10 Conservation Trust Fund to fund the stone crab reduction,
11 blue crab effort management, spiny lobster trap
12 certificate, and trap retrieval programs; requiring
13 proceeds from certain fees, fines, and penalties to be
14 deposited in the Marine Resources Conservation Trust Fund;
15 amending s. 370.13, F.S., relating to stone crab
16 regulation; authorizing the Fish and Wildlife Conservation
17 Commission to waive or defer replacement tag fees under
18 certain circumstances; amending s. 370.135, F.S., relating
19 to blue crab regulation; establishing certain endorsement
20 fees for the taking of blue crabs; establishing an annual
21 trap tag fee; authorizing the commission to waive or defer
22 replacement tag fees under certain circumstances;
23 authorizing the commission to establish by rule an amount

24 of equitable rent for access to state natural resources;
25 requiring approval of such rule by the Governor and
26 Cabinet; requiring the deposit of certain proceeds into
27 the Marine Resources Conservation Trust Fund; specifying
28 the use of such proceeds; requiring the commission to
29 waive endorsement and tag fees for certain program
30 participants; providing administrative penalties for
31 certain violations; prohibiting the unauthorized
32 possession of trap gear or removal of trap contents and
33 providing penalties therefor; providing penalties for
34 certain other prohibited activities relating to traps,
35 lines, buoys, and trap tags; providing penalties for
36 fraudulent reports related to endorsement transfers;
37 prohibiting certain activities during endorsement
38 suspension and revocation; preserving state jurisdiction
39 for certain convictions; providing requirements for
40 certain license renewal; appropriating certain fee
41 revenues to the commission for blue crab effort management
42 program costs; requiring the commission to create an
43 advisory board; amending s. 370.142, F.S., relating to the
44 spiny lobster trap certificate program; authorizing the
45 commission to waive or defer replacement tag fees under
46 certain circumstances; providing administrative penalties
47 for certain violations of the spiny lobster trap
48 certificate program; amending s. 370.143, F.S.; revising
49 provisions for certain trap retrieval programs and fees;
50 providing a recurring appropriation; providing an
51 effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. Paragraph (j) is added to subsection (1) of
56 section 370.0603, Florida Statutes, and paragraphs (c) and (d)
57 of subsection (2) of that section are amended, to read:
58 370.0603 Marine Resources Conservation Trust Fund;
59 purposes.--
60 (1) The Marine Resources Conservation Trust Fund within
61 the Fish and Wildlife Conservation Commission shall serve as a
62 broad-based depository for funds from various marine-related and
63 boating-related activities and shall be administered by the
64 commission for the purposes of:
65 (j) Funding the stone crab trap reduction program under s.
66 370.13, the blue crab effort management program under s.
67 370.135, the spiny lobster trap certificate program under s.
68 370.142, and the trap retrieval program under s. 370.143.
69 (2) The Marine Resources Conservation Trust Fund shall
70 receive the proceeds from:
71 (c) All fees collected pursuant to ss. 370.063, 370.13,
72 370.135, 370.142, 370.143, and 372.5704.
73 (d) All fines and penalties pursuant to ss. ~~s.~~ 370.021,
74 370.13, 370.135, and 370.142.
75 Section 2. Paragraph (b) of subsection (1) of section
76 370.13, Florida Statutes, is amended to read:
77 370.13 Stone crab; regulation.--
78 (1) FEES AND EQUITABLE RENT.--
79 (b) Certificate fees.--

80 1. For each trap certificate issued by the commission
81 under the requirements of the stone crab trap limitation program
82 established by commission rule, there is an annual fee of 50
83 cents per certificate. Replacement tags for lost or damaged tags
84 cost 50 cents each. In the event of a major natural disaster,
85 such as a hurricane or major storm, which causes massive trap
86 losses within an area declared by the Governor to be a disaster
87 emergency area, the commission may temporarily defer or
88 permanently waive replacement tag fees~~, except that tags lost in~~
89 ~~the event of a major natural disaster declared as an emergency~~
90 ~~disaster by the Governor shall be replaced for the cost of the~~
91 ~~tag as incurred by the commission~~.
92 2. The fee for transferring trap certificates is $1 per
93 certificate transferred, except that the fee for eligible crew
94 members is 50 cents per certificate transferred. Eligible crew
95 members shall be determined according to criteria established by
96 rule of the commission. Payment must be made by money order or
97 cashier's check, submitted with the certificate transfer form
98 developed by the commission.
99 3. In addition to the transfer fee, a surcharge of $1 per
100 certificate transferred, or 25 percent of the actual value of
101 the transferred certificate, whichever is greater, will be
102 assessed the first time a certificate is transferred outside the
103 original holder's immediate family.
104 4. Transfer fees and surcharges only apply to the actual
105 number of certificates received by the purchaser. A transfer of
106 a certificate is not effective until the commission receives a
107 notarized copy of the bill of sale as proof of the actual value

108 of the transferred certificate or certificates, which must also
109 be submitted with the transfer form and payment.
110 5. A transfer fee will not be assessed or required when
111 the transfer is within a family as a result of the death or
112 disability of the certificate owner. A surcharge will not be
113 assessed for any transfer within an individual's immediate
114 family.
115 6. The fees and surcharge amounts in this paragraph apply
116 in the 2005-2006 license year and subsequent years.
117 Section 3. Subsection (1) of section 370.135, Florida
118 Statutes, is amended, and subsections (3), (4), (5), and (6) are
119 added to that section, to read:
120 370.135 Blue crab; regulation.--
121 (1) No person, firm, or corporation shall transport on the
122 water, fish with or cause to be fished with, set, or place any
123 trap designed for taking blue crabs unless such person, firm, or
124 corporation is the holder of a valid saltwater products license
125 issued pursuant to s. 370.06 and the trap has a current state
126 number permanently attached to the buoy. The trap number shall
127 be affixed in legible figures at least 1 inch high on each buoy
128 used. The saltwater products license must be on board the boat,
129 and both the license and the crabs shall be subject to
130 inspection at all times. Only one trap number may be issued for
131 each boat by the commission upon receipt of an application on
132 forms prescribed by it. This subsection shall not apply to an
133 individual fishing with no more than five traps. ~~It is a felony~~
134 ~~of the third degree, punishable as provided in s. 775.082, s.~~
135 ~~775.083, or s. 775.084, for any person willfully to molest any~~

136 ~~traps, lines, or buoys, as defined herein, belonging to another~~
137 ~~without the express written consent of the trap owner. Any~~
138 ~~person receiving a judicial disposition other than dismissal or~~
139 ~~acquittal on a charge of willful molestation of a trap, in~~
140 ~~addition to the penalties specified in s. 370.021, shall lose~~
141 ~~all saltwater fishing privileges for a period of 24 calendar~~
142 ~~months. It is unlawful for any person to remove the contents of~~
143 ~~or take possession of another harvester's trap without the~~
144 ~~express written consent of the trap owner available for~~
145 ~~immediate inspection. Unauthorized possession of another's trap~~
146 ~~gear or removal of trap contents constitutes theft. Any person~~
147 ~~receiving a judicial disposition other than dismissal or~~
148 ~~acquittal on a charge of theft of or from a trap pursuant to~~
149 ~~this section or s. 370.1107 shall, in addition to the penalties~~
150 ~~specified in s. 370.021 and the provisions of this section,~~
151 ~~permanently lose all his or her saltwater fishing privileges~~
152 ~~including his or her saltwater products license and blue crab~~
153 ~~endorsement. In such cases endorsements, landings history, and~~
154 ~~trap certificates are nontransferable. In addition, any person,~~
155 ~~firm, or corporation receiving a judicial disposition other than~~
156 ~~dismissal or acquittal for violating this subsection or s.~~
157 ~~370.1107 shall also be assessed an administrative penalty of up~~
158 ~~to $5,000. Immediately upon receiving a citation for a violation~~
159 ~~involving theft of or from a trap and until adjudicated for such~~
160 ~~a violation, or receiving a judicial disposition other than~~
161 ~~dismissal or acquittal for such a violation, the person, firm,~~
162 ~~or corporation committing the violation is prohibited from~~

163 ~~transferring any blue crab endorsements, landings history, or~~
164 ~~trap certificates.~~
165 (3)(a) Endorsement fees.--
166 1. The fee for a hard-shell blue crab endorsement for the
167 taking of hard-shell blue crabs, as required by rule of the
168 commission, is $125, $25 of which must be used solely for trap
169 retrieval under s. 370.143 and rule 68B-55, Florida
170 Administrative Code.
171 2. The fee for a soft-shell blue crab endorsement for the
172 taking of soft-shell blue crabs, as required by rule of the
173 commission, is $250, $25 of which must be used solely for trap
174 retrieval under s. 370.143 and rule 68B-55, Florida
175 Administrative Code.
176 3. The fee for a nontransferable blue crab endorsement for
177 the taking of hard-shell blue crabs, as required by rule of the
178 commission, is $125, $25 of which must be used solely for trap
179 retrieval under s. 370.143 and rule 68B-55, Florida
180 Administrative Code.
181 4. The fee for an incidental-take blue crab endorsement
182 for the taking of blue crabs as bycatch in shrimp trawls and
183 stone crab traps, as established by commission rule, is $25.
184 (b) Trap tag fees.--For each trap tag issued by the
185 commission under the requirements of the blue crab effort
186 management program established by commission rule, there is an
187 annual fee of 50 cents per tag. The fee for replacement tags for
188 lost or damaged tags is 50 cents each plus shipping. In the
189 event of a major natural disaster, such as a hurricane or major
190 storm, which causes massive trap losses within an area declared

191 by the Governor to be a disaster emergency area, the commission
192 may temporarily defer or permanently waive replacement tag fees.
193 (c) Equitable rent.--The commission may establish by rule
194 an amount of equitable rent that may be recovered as partial
195 compensation to the state for the enhanced access to its natural
196 resources. In determining whether to establish such a rent and
197 the amount thereof, the commission may consider the amount of
198 revenues annually generated by endorsement fees, trap tag fees,
199 replacement trap tag fees, trap retrieval fees, and the
200 continued economic viability of the commercial blue crab
201 industry. Final approval of such a rule shall be by the Governor
202 and Cabinet sitting as the Board of Trustees of the Internal
203 Improvement Trust Fund.
204 (d) Disposition of fees, surcharges, civil penalties and
205 fines, and equitable rent.--Endorsement fees, trap tag fees,
206 civil penalties and fines, replacement trap tag fees, trap
207 retrieval fees, and equitable rent, if any, shall be deposited
208 in the Marine Resources Conservation Trust Fund. Not more than
209 50 percent of the revenues generated under this section may be
210 used for the operation and administration of the blue crab
211 effort management program. The remaining revenues generated
212 under this section shall be used for trap retrieval, management
213 of the blue crab fishery, public education activities, research,
214 and enforcement activities in support of the blue crab effort
215 management program.
216 (e) Waiver of fees.--For the 2006-2007 license year, the
217 commission shall waive all fees under this subsection for all
218 persons who qualify by September 30, 2006, to participate in the

219 blue crab effort management program established by commission
220 rule.
221 (4)(a) Untagged trap penalties.--In addition to any other
222 penalties provided in s. 370.021 for any person, firm, or
223 corporation that violates rule 68B-45.007(6)(b), Florida
224 Administrative Code, the following administrative penalties
225 apply:
226 1. For a first violation, the commission shall assess an
227 administrative penalty of up to $1,000 and the blue crab
228 endorsement holder's blue crab fishing privileges may be
229 suspended for the remainder of the current license year.
230 2. For a second violation that occurs within 24 months
231 after any previous such violation, the commission shall assess
232 an administrative penalty of up to $2,000 and the blue crab
233 endorsement holder's blue crab fishing privileges may be
234 suspended for 12 calendar months.
235 3. For a third violation that occurs within 36 months
236 after any two previous such violations, the commission shall
237 assess an administrative penalty of up to $5,000 and the blue
238 crab endorsement holder's blue crab fishing privileges may be
239 suspended for 24 calendar months.
240 4. A fourth violation that occurs within 48 months after
241 any three previous such violations shall result in permanent
242 revocation of all of the violator's saltwater fishing
243 privileges, including having the commission proceed against the
244 endorsement holder's saltwater products license in accordance
245 with s. 370.021.
246

247 Any person assessed an administrative penalty under this
248 paragraph shall, within 30 calendar days after notification, pay
249 the administrative penalty to the commission or request an
250 administrative hearing under ss. 120.569 and 120.57. The
251 proceeds of all administrative penalties collected under this
252 paragraph shall be deposited in the Marine Resources
253 Conservation Trust Fund.
254 (b) Trap theft; prohibitions and penalties.--It is
255 unlawful for any person to remove or take possession of the
256 contents of another harvester's trap without the express written
257 consent of the trap owner, which must be available for immediate
258 inspection. Unauthorized possession of another harvester's trap
259 gear or removal of trap contents constitutes theft. Any person
260 convicted of theft of or from a trap pursuant to this paragraph
261 shall, in addition to the penalties specified in s. 370.021 and
262 the provisions of this section, permanently lose all of his or
263 her saltwater fishing privileges, including saltwater products
264 licenses, blue crab endorsements, and all trap tags allotted to
265 him or her by the commission. In such cases, endorsements are
266 nontransferable. In addition, any person, firm, or corporation
267 convicted of a violation of this paragraph shall also be
268 assessed an administrative penalty of up to $5,000. Immediately
269 upon receiving a citation for a violation involving theft of or
270 from a trap and until adjudicated for such a violation or upon
271 receipt of a judicial disposition other than dismissal or
272 acquittal on such a violation, the violator is prohibited from
273 transferring any blue crab endorsement.

274 (c) Criminal activities.--Any person, firm, or corporation
275 convicted of violating commission rules that prohibit any of the
276 following commits a felony of the third degree, punishable as
277 provided in s. 775.082, s. 775.083, or s. 775.084:
278 1. The willful molestation of any blue crab trap, line, or
279 buoy that is the property of any licenseholder, without the
280 permission of that licenseholder.
281 2. The bartering, trading, leasing, or sale, or conspiring
282 or aiding in such barter, trade, lease, or sale, or supplying,
283 agreeing to supply, aiding in supplying, or giving away blue
284 crab trap tags unless the action is duly authorized by the
285 commission as provided by commission rules.
286 3. The making, altering, forging, counterfeiting, or
287 reproducing of blue crab trap tags.
288 4. Possession of altered, forged, counterfeit, or
289 imitation blue crab trap tags.
290 5. Possession of commission-issued original trap tags and
291 commission-issued replacement trap tags, the sum of which
292 exceeds by 1 percent the number of traps allowed by rule of the
293 commission.
294 6. Engaging in the commercial harvest of blue crabs during
295 the time the licenseholder's blue crab endorsements are under
296 suspension or revocation.
297
298 Any person, firm, or corporation convicted of a violation of
299 this paragraph shall be assessed an administrative penalty of up
300 to $5,000, and all of the blue crab endorsements possessed by
301 the person, firm, or corporation may be suspended for up to 24

302 calendar months. Immediately upon receiving a citation involving
303 a violation of this paragraph and until adjudicated for such a
304 violation, or if convicted of such a violation, the person,
305 firm, or corporation committing the violation is prohibited from
306 transferring any blue crab endorsements.
307 (d) Endorsement transfers; fraudulent reports;
308 penalties.--For any person, firm, or corporation convicted of
309 fraudulently reporting the actual value of transferred blue crab
310 endorsements, the commission may automatically suspend or
311 permanently revoke the seller's or the purchaser's blue crab
312 endorsements. If the endorsement is permanently revoked, the
313 commission shall also permanently deactivate the endorsement
314 holder's blue crab trap tag accounts.
315 (e) Prohibitions during endorsement suspension and
316 revocation.--During any period of suspension or revocation of a
317 blue crab endorsement holder's endorsements, he or she shall,
318 within 15 days after notice provided by the commission, remove
319 from the water all traps subject to that endorsement. Failure to
320 do so shall extend the period of suspension or revocation for an
321 additional 6 calendar months.
322 (5) For purposes of this section, a conviction is any
323 disposition other than acquittal or dismissal.
324 (6) An endorsement may not be renewed until all fees and
325 administrative penalties imposed under this section are paid.
326 Section 4. Paragraphs (b) and (c) of subsection (2) of
327 section 370.142, Florida Statutes, are amended to read:
328 370.142 Spiny lobster trap certificate program.--

329 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;
330 PENALTIES.--The Fish and Wildlife Conservation Commission shall
331 establish a trap certificate program for the spiny lobster
332 fishery of this state and shall be responsible for its
333 administration and enforcement as follows:
334 (b) Trap tags.--Each trap used to take or attempt to take
335 spiny lobsters in state waters or adjacent federal waters shall,
336 in addition to the crawfish trap number required by s.
337 370.14(2), have affixed thereto an annual trap tag issued by the
338 commission. Each such tag shall be made of durable plastic or
339 similar material and shall, based on the number of certificates
340 held, have stamped thereon the owner's license number. To
341 facilitate enforcement and recordkeeping, such tags shall be
342 issued each year in a color different from that of each of the
343 previous 3 years. The annual certificate fee shall be $1 per
344 certificate. Replacement tags for lost or damaged tags may be
345 obtained as provided by rule of the commission. <u>In the event of</u>
346 <u>a major natural disaster, such as a hurricane or major storm,</u>
347 <u>which causes massive trap losses within an area declared by the</u>
348 <u>Governor to be a disaster emergency area, the commission may</u>
349 <u>temporarily defer or permanently waive replacement tag fees.</u>
350 (c) Prohibitions; penalties.--
351 1. It is unlawful for a person to possess or use a spiny
352 lobster trap in or on state waters or adjacent federal waters
353 without having affixed thereto the trap tag required by this
354 section. It is unlawful for a person to possess or use any other
355 gear or device designed to attract and enclose or otherwise aid

356 in the taking of spiny lobster by trapping that is not a trap as
357 defined in rule 68B-24.006(2), Florida Administrative Code.
358 2. It is unlawful for a person to possess or use spiny
359 lobster trap tags without having the necessary number of
360 certificates on record as required by this section.
361 3. It is unlawful for any person to willfully molest, take
362 possession of, or remove the contents of another harvester's
363 trap without the express written consent of the trap owner
364 available for immediate inspection. Unauthorized possession of
365 another's trap gear or removal of trap contents constitutes
366 theft. Any person receiving a judicial disposition other than
367 dismissal or acquittal on a charge of theft of or from a trap
368 pursuant to this subparagraph or s. 370.1107 shall, in addition
369 to the penalties specified in ss. 370.021 and 370.14 and the
370 provisions of this section, permanently lose all his or her
371 saltwater fishing privileges, including his or her saltwater
372 products license, crawfish endorsement, and all trap
373 certificates allotted to him or her through this program. In
374 such cases, trap certificates and endorsements are
375 nontransferable. Any person receiving a judicial disposition
376 other than dismissal or acquittal on a charge of willful
377 molestation of a trap, in addition to the penalties specified in
378 ss. 370.021 and 370.14, shall lose all saltwater fishing
379 privileges for a period of 24 calendar months. In addition, any
380 person, firm, or corporation charged with violating this
381 paragraph and receiving a judicial disposition other than
382 dismissal or acquittal for violating this subparagraph or s.
383 370.1107 shall also be assessed an administrative penalty of up

384 to $5,000. Immediately upon receiving a citation for a violation
385 involving theft of or from a trap, or molestation of a trap, and
386 until adjudicated for such a violation or, upon receipt of a
387 judicial disposition other than dismissal or acquittal of such a
388 violation, the person, firm, or corporation committing the
389 violation is prohibited from transferring any crawfish trap
390 certificates and endorsements.
391 4. In addition to any other penalties provided in s.
392 370.021, a commercial harvester, as defined by rule 68B-
393 24.002(1), Florida Administrative Code, who violates the
394 provisions of this section, or the provisions relating to traps
395 of chapter 68B-24, Florida Administrative Code, shall be
396 punished as follows:
397 a. If the first violation is for violation of subparagraph
398 1. or subparagraph 2., the commission shall assess an additional
399 civil penalty of up to $1,000 and the crawfish trap number
400 issued pursuant to s. 370.14(2) or (6) may be suspended for the
401 remainder of the current license year. For all other first
402 violations, the commission shall assess an additional civil
403 penalty of up to $500.
404 b. For a second violation of subparagraph 1. or
405 subparagraph 2. which occurs within 24 months of any previous
406 such violation, the commission shall assess an additional civil
407 penalty of up to $2,000 and the crawfish trap number issued
408 pursuant to s. 370.14(2) or (6) may be suspended for the
409 remainder of the current license year.
410 c. For a third or subsequent violation of subparagraph 1.,
411 subparagraph 2., or subparagraph 3. which occurs within 36

412 months of any previous two such violations, the commission shall
413 assess an additional civil penalty of up to $5,000 and may
414 suspend the crawfish trap number issued pursuant to s. 370.14(2)
415 or (6) for a period of up to 24 months or may revoke the
416 crawfish trap number and, if revoking the crawfish trap number,
417 may also proceed against the licenseholder's saltwater products
418 license in accordance with the provisions of s. 370.021(2)(h).
419 d. Any person assessed an additional civil penalty
420 pursuant to this section shall within 30 calendar days after
421 notification:
422 (I) Pay the civil penalty to the commission; or
423 (II) Request an administrative hearing pursuant to the
424 provisions of s. 120.60.
425 e. The commission shall suspend the crawfish trap number
426 issued pursuant to s. 370.14(2) or (6) for any person failing to
427 comply with the provisions of sub-subparagraph d.
428 5.a. It is unlawful for any person to make, alter, forge,
429 counterfeit, or reproduce a spiny lobster trap tag or
430 certificate.
431 b. It is unlawful for any person to knowingly have in his
432 or her possession a forged, counterfeit, or imitation spiny
433 lobster trap tag or certificate.
434 c. It is unlawful for any person to barter, trade, sell,
435 supply, agree to supply, aid in supplying, or give away a spiny
436 lobster trap tag or certificate or to conspire to barter, trade,
437 sell, supply, aid in supplying, or give away a spiny lobster
438 trap tag or certificate unless such action is duly authorized by

439 the commission as provided in this chapter or in the rules of
440 the commission.
441 6.a. Any person who violates the provisions of
442 subparagraph 5., or any person who engages in the commercial
443 harvest, trapping, or possession of spiny lobster without a
444 crawfish trap number as required by s. 370.14(2) or (6) or
445 during any period while such crawfish trap number is under
446 suspension or revocation, commits a felony of the third degree,
447 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
448 b. In addition to any penalty imposed pursuant to sub-
449 subparagraph a., the commission shall levy a fine of up to twice
450 the amount of the appropriate surcharge to be paid on the fair
451 market value of the transferred certificates, as provided in
452 subparagraph (a)1., on any person who violates the provisions of
453 sub-subparagraph 5.c.
454 c. In addition to any penalty imposed pursuant to sub-
455 subparagraph a., any person receiving any judicial disposition
456 other than acquittal or dismissal for a violation of
457 subparagraph 5. shall be assessed an administrative penalty of
458 up to $5,000, and the crawfish endorsement under which the
459 violation was committed may be suspended for up to 24 calendar
460 months. Immediately upon issuance of a citation involving a
461 violation of subparagraph 5. and until adjudication of such a
462 violation, and after receipt of any judicial disposition other
463 than acquittal or dismissal for such a violation, the person
464 holding the crawfish endorsement listed on the citation is
465 prohibited from transferring any spiny lobster trap
466 certificates.

467 7. Any certificates for which the annual certificate fee
468 is not paid for a period of 3 years shall be considered
469 abandoned and shall revert to the commission. During any period
470 of trap reduction, any certificates reverting to the commission
471 shall become permanently unavailable and be considered in that
472 amount to be reduced during the next license-year period.
473 Otherwise, any certificates that revert to the commission are to
474 be reallotted in such manner as provided by the commission.
475 8. The proceeds of all civil penalties collected pursuant
476 to subparagraph 4. and all fines collected pursuant to sub-
477 subparagraph 6.b. shall be deposited into the Marine Resources
478 Conservation Trust Fund.
479 9. All traps shall be removed from the water during any
480 period of suspension or revocation.
481 Section 5. Subsections (1), (2), and (3) of section
482 370.143, Florida Statutes, are amended to read:
483 370.143 Retrieval of spiny lobster, ~~crawfish, and~~ stone
484 crab, blue crab, and black sea bass traps during closed season;
485 commission authority; fees.--
486 (1) The Fish and Wildlife Conservation Commission is
487 authorized to implement a trap retrieval program for retrieval
488 of spiny lobster, ~~crawfish, and~~ stone crab, blue crab, and black
489 sea bass traps remaining in the water during the closed season
490 for each species. The commission is authorized to contract with
491 outside agents for the program operation.
492 (2) A retrieval fee of $10 per trap retrieved shall be
493 assessed trap owners. However, for each person holding a spiny
494 lobster endorsement, ~~crawfish stamp number or~~ a stone crab

495 endorsement, or a blue crab endorsement issued under rule of the
496 commission, the retrieval fee shall be waived for the first five
497 traps retrieved. Traps recovered under this program shall become
498 the property of the commission or its contract agent, as
499 determined by the commission, and shall be either destroyed or
500 resold to the original owner. Revenue from retrieval fees shall
501 be deposited in the Marine Resources Conservation Trust Fund and
502 used solely for operation of the trap retrieval program.
503 (3) Payment of all assessed retrieval fees shall be
504 required prior to renewal of the trap owner's saltwater products
505 license ~~and stone crab and or crawfish endorsements~~. Retrieval
506 fees assessed under this program shall stand in lieu of other
507 penalties imposed for such trap violations.
508 Section 6. Beginning in the 2006-2007 fiscal year, the sum
509 of $132,000 is appropriated from the Marine Resources
510 Conservation Trust Fund to the Fish and Wildlife Conservation
511 Commission on a recurring basis for the purposes of implementing
512 the blue crab effort management program pursuant to s.
513 370.135(3)(b), Florida Statutes, and providing for the
514 administrative costs of the Blue Crab Advisory Board as created
515 by commission rule.
516 Section 7. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1533 Petroleum Contamination
SPONSOR(S): Sands
TIED BILLS: **IDEN./SIM. BILLS:** SB 2126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N	Perkins	Kliner
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N	Dixon	Dixon
3) State Resources Council		Perkins RP	Hamby JRP
4)			
5)			

SUMMARY ANALYSIS

The bill creates a presumption regarding the discovery of additional contamination at certain underground petroleum storage tank sites that are being upgraded to secondary containment as required by the Department of Environmental Protection (DEP). The presumption is that the secondary discovery of contamination is part of the original discharge that initially qualified the site for state funding. The bill also provides certain conditions under which the presumption does not apply.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the Inland Protection Trust Fund (IPTF)[1] and will not require any additional appropriations.

Safeguard Individual Liberty : The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

Promote Personal Responsibility: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation. However, DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

B. EFFECT OF PROPOSED CHANGES:

The Storage Tank Regulation Section is part of the Bureau of Petroleum Storage Systems in the DEP Division of Waste Management. In 1983, Florida was one of the first states in the country to pass legislation (State Underground Petroleum Environmental Response Act) and adopt rules for regulation of underground and aboveground storage tank systems. Since then, over 28,000 facilities have reported discharges of petroleum products from storage tank systems.

Florida relies on groundwater for about 92 percent of its drinking water needs, and has some of the most stringent water pollution rules in the country. To further the safeguards for the water system, all new and replacement petroleum storage tank systems must have secondary containment, and all remaining single-wall systems must replace their systems with secondary containment by the beginning of 2010. DEP contracts with counties to perform annual compliance inspections.[2]

Thousands of petroleum facilities that are eligible for state funded cleanups occasionally have additional discharges that are not covered by a state funded program. Distinguishing between the original discharge and the new discharge can be very difficult and determining the costs of cleanup associated with each discharge can be equally difficult. "Old discharges" at a site eligible for state-funded cleanup (reported prior to December 31, 1998) are eligible to be cleaned up using state funds. "New discharges" (reported after December 31, 1998) are not eligible for state funding. For those new discharges, the owner of the petroleum facility would be responsible for funding the cleanup through their environmental liability insurance for a new discharge.

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[1] The IPTF is a non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the state to pay for the expedited cleanup of petroleum contaminated sites.

[2] http://www.dep.state.fl.us/waste/categories/pss/default.htm

The current environmental liability insurance policies in effect in Florida contain provisions that have proven to be problematic:

- Policies are covering only discharges that can be shown to have occurred during the policy period. It is difficult to determine when a discharge occurred.
- The policy will cover only discharges from the storage system. If the system passes a tightness test, the insurer will deny coverage.
- The policies require that the discharges occur after a retroactive date. Again, it is difficult to prove when a discharge occurred.
- Some carriers have policy exclusions for contamination "arising from the removal" of a storage system. The exclusion also applies to discharges "arising from maintenance" activities. This further complicates the timely upgrading of tanks to secondary containment.[3]

The dominant environmental insurance carrier in Florida, AIG, will not write or renew coverage on older single-walled corrosion-resistant systems. The concern appears to be that when these single-walled containment systems are replaced with the required secondary containment systems, contamination will be discovered and claims will be filed. Great American and Mid-Continent Insurance companies are no longer writing coverage in Florida. Zurich Insurance will not write coverage if the insured plans to replace their underground storage tank systems within the next three years.[4]

In 1999, the Legislature created section 376.30714, F.S., to provide a mechanism for DEP to distinguish between old and new discharges which allows DEP to negotiate and enter into site-rehabilitation agreements with applicants at sites in which there is existing contamination and in which a new discharge occurs.

In 2005, the Legislature provided funding for limited interim soil source removals for sites eligible for state funding that upgrade their underground petroleum storage tanks to secondary containment in advance of the site's priority ranking for cleanup. This was done in an effort to expedite the required secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline due to owners or operators being reluctant to replace their tanks ahead of their priority ranking. Owners and operators are reluctant to replace tanks because treating the contaminated soil is expensive and the IPTF will not pay for such treatment out of priority order. As a result, the contaminated soil is often put back into the ground and cleanup occurs when the site's priority ranking comes due. However, even with the funding provisions enacted in 2005, many facility owners are still reluctant to upgrade their tanks early because their insurance carrier may cancel or refuse to renew their policies if they discover contamination and free product at the time of the upgrade, since it is difficult or impossible to distinguish between and "old discharge" that is eligible for state funding and the "new discharge" that the insurer must cover.

Effect of Proposed Change

The bill creates section 376.30716, F.S., relating to petroleum contamination. The bill provides the following two definitions relating to petroleum:

- "Exclusion zone" means the subsurface area within 10 feet of an underground storage tank, integral piping, and dispenser, and the area between the underground storage tank and dispenser.
- "Subsequently discovered discharge" means a discharge or suspected discharge on or after July 1, 2005, at a site eligible for state funding under ss. 376.305, 376.3071, or 376.3072, F.S.

Language in the bill acknowledges that it is difficult to distinguish between a discharge of petroleum products from a petroleum storage system which is eligible for state cleanup funding and which is not eligible for state cleanup funding. The bill stipulates that until a secondary containment upgrade of

[3] HB 1735 CS, 2005
[4] Id.

underground storage tanks is complete at a site, a subsequently discovered discharge at the site is presumed to be part of the original discharge that qualifies for state funding. However, the presumption does not apply:

- If the department presents competent and substantial evidence demonstrating that the subsequently discovered discharge occurred from a source that is independent and separate from the discharge that qualifies for state funding.
- To a site where petroleum storage systems have been upgraded, prior to July 1, 2005, to secondary containment in accordance with rule 62-761, F.A.C.
- To a site having newly discovered free product outside the exclusion zone.
- To a site having an increase in the concentration of existing petroleum contamination outside the exclusion zone of 1,000 percent or greater.
- To a site for which the department has, by a current valid order, determined that the discharge that is eligible for state funding has been cleaned up or no further action is necessary.

The bill exempts owners and operators of petroleum storage systems from section 376.30714, F.S., relating to DEP's negotiated agreements regarding "old discharges" and "new discharges" if the discharge is considered a subsequent discharge. The bill provides that DEP shall not, as part of a closure report or assessment for a site eligible for state funding, require soil or ground water sampling.

The bill provides that regardless of the discharge presumption provided in the bill:

- Owners or operators are required to report all incidents or discharges to DEP
- Owners or operators are to provide copies of all storage tank and piping tightness tests regardless of the results to DEP.

C. SECTION DIRECTORY:

Section 1 Creates section 376.30716, F.S., relating to subsequent petroleum discharges and eligibility for state funding.

Section 2 Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: DEP reports the fiscal impact of this bill can be handled through the existing resources of the IPTF and will not require any additional appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that the bill would further encourage petroleum facilities to perform the secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline. The discovery of additional contamination that is folded into the existing state funded

discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

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:

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

N/A

1 A bill to be entitled
2 An act relating to petroleum contamination; creating s.
3 376.30716, F.S.; providing definitions; creating a
4 presumption regarding the source of a subsequently
5 discovered discharge at certain petroleum contamination
6 sites; providing exceptions to the application of the
7 presumption; specifying that certain provisions concerning
8 site rehabilitation agreements do not apply to a
9 subsequently discovered discharge; prohibiting the
10 Department of Environmental Protection from requiring soil
11 or groundwater sampling relating to closure assessments at
12 certain petroleum contamination sites; specifying
13 responsibilities of a facility owner or operator;
14 providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 376.30716, Florida Statutes, is created
19 to read:
20 376.30716 Cleanup of certain sites.--
21 (1) As used in this section, the term:
22 (a) "Exclusion zone" means the subsurface area within 10
23 feet of an underground storage tank, integral piping, and
24 dispenser, and the area between the underground storage tank and
25 dispenser.
26 (b) "Subsequently discovered discharge" means a discharge
27 or suspected discharge that is discovered on or after July 1,
28 2005, at a site eligible for state funding under s. 376.305, s.

29 376.3071, or s. 376.3072.
30 (2) As noted in s. 376.30714, it may be difficult to
31 distinguish between a discharge of petroleum products from a
32 petroleum storage system which is eligible for state funding and
33 a discharge reported after December 31, 1998, which is not
34 eligible for state funding. Until the secondary containment
35 upgrade of underground storage tanks, as required under rule 62-
36 761, Florida Administrative Code, is complete at a site, a
37 subsequently discovered discharge at the site is presumed to be
38 part of the original discharge that qualifies for state funding.
39 However, this presumption does not apply:
40 (a) If the department presents competent and substantial
41 evidence demonstrating that the subsequently discovered
42 discharge occurred from a source that is independent and
43 separate from the discharge that qualifies for state funding.
44 (b) To a site where petroleum storage systems have been
45 upgraded, prior to July 1, 2005, to secondary containment in
46 accordance with rule 62-761, Florida Administrative Code.
47 (c) To a site having newly discovered free product outside
48 the exclusion zone.
49 (d) To a site having an increase in the concentration of
50 existing petroleum contamination outside the exclusion zone of
51 1,000 percent or greater.
52 (e) To a site for which the department has, by a current
53 valid order, determined that the discharge that is eligible for
54 state funding has been cleaned up or no further action is
55 necessary.
56 (3) Section 376.30714 does not apply to a subsequently

57 discovered discharge. The department shall not, as part of a
58 closure report or assessment for a site that is eligible for
59 state funding under s. 376.305, s. 376.3071, or s. 376.3072,
60 require soil or groundwater sampling.
61 (4) Regardless of whether the presumption specified in
62 subsection (2) applies, a facility owner or operator shall:
63 (a) Report all incidents or discharges in accordance with
64 rules of the department.
65 (b) Provide to the department a copy of all test results
66 of storage tank and piping tightness regardless of the results.
67 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1557 CS
SPONSOR(S): Brummer
TIED BILLS:

Wekiva Onsite Disposal System Compliance Grant Program

IDEN./SIM. BILLS: SB 1794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Kliner	Kliner
2) Health Care Appropriations Committee	14 Y, 0 N, w/CS	Money	Massengale
3) State Resources Council		Kliner	Hamby
4)			
5)			

SUMMARY ANALYSIS

House Bill 1557 CS creates the Wekiva Onsite Disposal System Compliance Grant Program in the Department of Health (DOH). The program would provide grants of up to $10,000 per property to low-income property owners who are using onsite sewage treatment disposal systems in the Wekiva Study Area or the Wekiva River Protection Area. The purpose of the grant program is to assist the property owners in complying with rules developed by DOH, the Department of Environmental Protection (DEP), or the St. Johns Water Management District to enforce compliance with onsite disposal system standards.

The bill allows any property owner in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system to comply with adopted rules. The bill specifies that the grant is in the form of a rebate to the property owner for documented costs associated with complying with the adopted rules.

The bill also authorizes DOH to adopt rules for creating forms, implementing procedures, and establishing requirements for the application process and for disbursing grants under this bill and for documenting compliance costs incurred by the property owner; however, the rulemaking shall be suspended until the completion of the study.

The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs. The bill directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs. Both agencies are to submit the reports to the President of the Senate and to the Speaker of the House before the start of the 2007 Regular Session.

The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years. The bill includes appropriations for the required studies.

The bill makes the grant program contingent on an appropriation in the General Appropriations Act. The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:

- So DEP can conduct the study of various sources of nitrogen into the Wekiva.
- So DOH can contract for the study of the effects of onsite systems on the Wekiva.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill creates a grant program in DOH that will increase workload and costs for DOH.

The bill directs DEP to conduct a study to determine the various sources of nitrogen in the specified area. In addition, the DOH is required to contract for a study to determine the effect of onsite systems on the Wekiva.

The bill provides property owners in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system.

Promote personal responsibility—The grant program is to assist certain property owners in defraying costs associated with updating, replacing, repairing, or replacing onsite waste disposal systems in the Wekiva River protection Area.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Federal Clean Water Act and Wastewater Discharge
The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA)[1], established the basic framework for pollution control in the nation's water bodies. Its primary goal was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the CWA was intended to restore and protect the health of the nation's water bodies.

The CWA established the foundation for wastewater discharge control in the United States. According to the Environmental Protection Agency (EPA), the CWA's primary objective is to "restore and maintain the chemical, physical and biological integrity of the nation's waters."[2] The CWA established a control program for ensuring that communities have clean water by regulating the release of contaminants into our country's waterways. Permits that limit the amount of pollutants discharged are required of all municipal and industrial wastewater dischargers under the National Pollutant Discharge Elimination System (NPDES) permit program. In addition, a construction grants program was set up to assist publicly owned wastewater treatment works build the improvements required to meet these new limits.

According to the EPA, more than 75 percent of the nation's population is served by centralized wastewater collection and treatment systems. The remaining population uses septic or other onsite systems. Approximately 16,000 municipal wastewater treatment facilities are in operation nationwide. The CWA requires that municipal wastewater treatment plant discharges meet a minimum of 'secondary treatment.' More than 30 percent of the wastewater treatment facilities today produce cleaner discharges by providing even greater levels of treatment than secondary.

Central Wastewater Collection and Treatment[3]
The most common form of pollution control in the United States consists of a system of sewers and wastewater treatment plants. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to water bodies or land, or

[1] Public Law 92-500
[2] http://www.epa.gov/owm/primer.pdf
[3] EPA primer on municipal systems at http://www.epa.gov/owm/primer.pdf

reused. Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility. These systems are usually reliable and consume no power. However, the slope requirements to maintain adequate flow by gravity may require deep excavations in hilly or flat terrain, as well as the addition of sewage pump stations, which can significantly increase the cost of conventional collection systems. Manholes and other sewer appurtenances also add substantial costs to conventional collection systems.

Cities began to install wastewater collection systems in the late nineteenth century because of an increasing awareness of waterborne disease and the popularity of indoor plumbing and flush toilets. In the year 2000, approximately 208 million people in the United States were served by centralized collection.

On-site Systems

Generally, septic systems are used to treat and dispose of relatively small volumes of wastewater, usually from houses and businesses that are located relatively close together. Septic systems are also called onsite wastewater treatment systems, decentralized wastewater treatment systems, on-lot systems, individual sewage disposal systems, cluster systems, package plants, and private sewage systems. Systems are considered "decentralized" because they do not involve central wastewater collection and treatment.

According to the EPA, the typical septic treatment system includes a septic tank, which digests organic matter and separates matter that floats (e.g., oils and grease) and settling solids from the wastewater. Soil-based systems discharge the liquid (effluent) from the septic tank into a series of perforated pipes buried in a leach field, leaching chambers, or other special units designed to slowly release the effluent into the soil or surface water, sometimes referred to as a drainage field.

Alternative systems use pumps or gravity to help septic tank effluent trickle through sand, organic matter (e.g., peat, sawdust), constructed wetlands, or other media to remove or neutralize pollutants like disease-causing pathogens, nitrogen, phosphorus, and other contaminants. Some alternative systems are designed to evaporate wastewater or disinfect it before it is discharged to the soil or surface waters.[4] The EPA developed guidelines to assist communities in establishing comprehensive management programs for onsite/decentralized wastewater systems to improve water quality and protect public health. The voluntary guidelines address the sensitivity of the environment in the community and the complexity of the system used. The five model management programs include:

- System inventory and awareness of maintenance needs.
- Management through maintenance contracts.
- Management through operating permits.
- Utility operation and maintenance.
- Utility ownership and management.[5]

According to the U.S. Census Bureau, approximately 26 million homes (one-fourth of all homes) in America are served by decentralized wastewater treatment systems. The Census Bureau reports that the distribution and density of septic systems vary widely by region and state, from a high of about 55 percent in Vermont to a low of around 10 percent in California. The New England states have the highest proportion of homes served by septic systems: New Hampshire and Maine both report that about one-half of all homes are served by individual systems. More than one-third of the homes in the southeastern states depend on these systems, including approximately 48 percent in North Carolina and about 40 percent in both Kentucky and South Carolina. More than 60 million people in the nation are served by septic systems. About one-third of all new development is served by septic or other decentralized treatment systems.[6] According to the Florida Department of Health, 31 percent of the

[4] http://cfpub2.epa.gov/owm/septic/home.cfm - Frequently Asked Questions
[5] http://www.epa.gov/owm/septic/pubs/septic_guidelines_factsheet.pdf
[6] http://cfpub2.epa.gov/owm/septic/faqs.cfm?program_id=70#358

Florida population is served by an 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.[7]

In Florida, the effect of waste disposal, whether through an on-site system or a centralized system, will implicate laws relating to the Total Maximum Daily Load Program (TMDL), which describes the amount of each pollutant a water body can receive without violating state water quality standards.

TMDL Program

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the states until numerous lawsuits were filed by environmental groups.[8]

Currently, DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body, phase two is monitoring and assessing to verify water quality impairments, phase 3 is the development and adoption of TMDLs for waters verified as impaired, phase 4 is the development of basin management action plans to achieve the TMDL, and phase 5 is the implementation of the plan and monitoring of results.

During the 2005 Legislative Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[9]

The law creates incentives to participate in the BMAP process and establishes a more direct linkage between the actions specified in the BMAP and activities regulated by DEP. Consistent with the existing provisions in s. 403.067, F.S., non-point sources are still managed through a non-regulatory, incentive-based program. However, in order to promote the same predictable pollution reduction performance among non-regulated entities as exists for permitted entities, the law provides the following:

- Non-regulated activities are not eligible for the incentives associated with the presumption of compliance with state water quality standards and the waiver of liability for pollution if adopted best management practices are not properly and timely implemented.
- Non-regulated activities that choose not to implement adopted best management practices must demonstrate compliance with applicable water quality standards.
- DEP is authorized to take enforcement actions where a party fails to properly implement best management practices or provide data demonstrating compliance with water quality standards.

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[7] http://www.doh.state.fl.us/environment/ostds/intro.htm

[8] Florida implements the TMDL program in s. 403.067, Florida Statutes.

[9] House of Representatives State Resources Council Staff Analysis for CS/HB 1839, 2005 Regular Session

The Wekiva River Basin
The Wekiva Basin, consisting of the Wekiva River, the St. Johns River, and their tributaries, along with associated lands in central Florida, is part of a wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve. The river is a spring-fed system associated with 19 springs that are connected to the Florida Aquifer. Eleven of these springs are second and third magnitude springs, meaning those springs discharge 10 to 100 cubic feet of water per second or 1 to 10 cubic feet of water per second, respectively.

The Wekiva Basin Area Task Force
On September 26, 2002, Governor Bush established the "Wekiva Basin Area Task Force" to balance the transportation needs associated with this projected growth and protection of the Wekiva Basin.[10] The task force was charged with evaluating and providing recommendations for appropriate highway routes connecting State Road 429 to Interstate 4 (while providing the greatest protection to the Wekiva Basin), in addition to evaluating and providing recommendations for the potential expansion of roads and corridors within the Wekiva Basin. The task force was charged with considering, among other issues, land acquisition, springshed protection, innovative road design, protection of rural character, protection of habitat, utilization of financial resources, and the adequacy of local governments relating to transportation corridors.[11] The task force completed its work in 2003, and provided over a dozen recommendations in its final report. Legislation to implement the task force's recommendations was considered during the 2003 Legislative Session, but did not pass.[12]

The Wekiva Parkway and Protection Act of 2004 (Ch. 2004-384, L.O.F.)
On July 1, 2003, Governor Bush issued Executive Order No. 03-112, creating a 28-member Wekiva River Basin Coordinating Committee. Membership of the committee included the Commissioner of Agriculture, the Secretaries of the Department of Community Affairs, the Department of Environmental Protection, and the Department of Transportation, the Executive Directors of the St. Johns River Water Management District (SJRWMD), the Florida Fish and Wildlife Conservation Commission, and the East Central Florida Regional Planning Council. The committee also included eight appointed individuals with balanced representation from citizen groups, the agricultural community, property owners, and environmental or conservation organizations.

The committee was charged with considering the recommendations of the Wekiva Basin Area Task Force, and to consider the use of innovative planning and development strategies, such as rural land stewardship and other mechanisms for concentrating development in appropriate areas, and the use of the latest science-based information and methods, performance-based-planning strategies, and development standards. In addition, the committee was to address issues of compatibility with the existing comprehensive plans and land development regulations of those local governments with jurisdiction over lands located within the Wekiva River Protection Area.[13]

The Wekiva River Basin Coordinating Committee issued its final report on March 16, 2004. The committee's recommendations were adopted and passed into law (chapter 2004-384, Laws of Florida). The law created part III of chapter 369, F.S., consisting of s. 369.314-369.324, F.S., as the Wekiva Parkway and Protection Act. Some of the major provisions of the law include:

- Statements of legislative findings and intent.
- A legal description of the Wekiva Study Area, including the majority of the land within the Wekiva Study Area which contributes groundwater recharge to the Wekiva River and springs

[10] See Executive Order No. 2002-259.
[11] Wekiva Basin Area Task Force, Final Report: Recommendations for Planning and Locating the Wekiva Parkway While Preserving the Wekiva River Basin Ecosystem, January 15, 2003. See links at http://www.dca.state.fl.us/fdcp/dcp/wekiva/wekivatf/index.cfm
[12] CS/SB 1956 passed the Senate, however, HB 1333 died in committee.
[13] Executive Order Number 03-112, July 1, 2003, may be found at http://www.dep.state.fl.us/secretary/news/2003/july/0701_eo.htm

(counties and municipalities located within the Wekiva Study Area include: Lake County and the municipalities of Eustis and Mount Dora; Orange County and the municipalities of Apopka, Eatonville, Maitland, Oakland, Ocoee, Orlando and Winter Garden; and Seminole County and the municipalities of Lake Mary, Longwood and Altamonte Springs).

- Guiding principles for the Wekiva Parkway Design Features and Construction.
- A requirement that the Department of Transportation (DOT), the Department of Environmental Protection (DEP), the St. Johns River Water Management District, the Orlando-Orange County Expressway Authority, and other land acquisition entities cooperate and establish funding responsibilities and partnerships by agreement, to the extent funds are available to the various entities, to develop the Wekiva Study Area.
- A requirement that DOT, subject to an appropriation by the Legislature, purchase lands in the Wekiva Study Area necessary for the construction of the Wekiva Parkway and the preservation of environmentally sensitive lands.
- Requirements for several studies and rule making related to the development and protection of the Wekiva Study Area, including looking at methods to reduce nitrates from leeching into the watershed from onsite sewage treatment and disposal systems.

Wekiva Basin Onsite Sewage Treatment and Disposal System Study

Within the Wekiva Parkway and Protection Act, several studies are listed. One of the studies required DOH, in consultation with DEP, to study the efficacy and applicability of onsite disposal system standards needed to achieve nitrogen reductions protective of groundwater quality within the Wekiva Study Area including publicly owned lands and report to the Governor and the Department of Community Affairs. The Department of Health published the Wekiva Basin Onsite Sewage Treatment and Disposal System Study report on December 1, 2004.[14]

The study found that the Wekiva Study Area is underlaid by a karst geology characterized by limestone or dolostone bedrock with caves and springs. The report states that onsite sewage treatment and disposal systems have been used for many years as a relatively low maintenance, low cost method of safely treating and disposing of human waste, and that there are an estimated 87,000 septic tanks used for onsite sewage disposal by property owners in the Wekiva Study Area. The typical, conventional onsite sewage treatment and disposal system consists of a septic tank distribution piping, and drainfield.[15] The treatment process begins in the septic tank. The septic tank is designed to skim off fats, oils, and greases; settle out the larger solids; and partially treat the sewage through breakdown by anaerobic bacteria. The waste then leaves the tank through the distribution piping and is distributed into the soil by the drainfield. Unsaturated soil surrounding the drainfield is extremely effective at removing disease-causing viruses, bacteria, and parasites.

The study concluded that in areas where development densities are low, the overall costs of onsite sewage treatment and disposal systems are less than a central sewer system and that onsite sewage treatment and disposal systems can provide protection of the environment and the public health that is comparable to a central sewer system.[16]

Based on these findings, DOH provided the following recommendations:

- Set a discharge limit of 10 milligrams per liter of total nitrogen for new systems, systems being modified, and for existing systems in the primary and secondary Wekiva Study Area protection zones.

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[14] http://www.doh.state.fl.us/environment/ostds/wekiva/wekivastudyrtp.pdf

[15] According to the report, a family of four will discharge approximately 25 pounds of nitrogen per year into the drainfield of a conventional onsite sewage treatment and disposal system. A conventional system costs from $5,500 to $7,500. A comparable system that also reduces nitrates costs from $7,500 to $9,000.

[16] The report considered utilizing a more stringent level of wastewater treatment, including, but not limited to, the use of multiple tanks to combine aerobic and anaerobic treatment to reduce the level of nitrates.

- Prohibit the land spreading of septage (raw, untreated solids and liquids) and grease trap waste in the Wekiva Study Area. Septage waste would be required to be disposed of at wastewater treatment plants.
- Evaluate the economic feasibility of sewering versus nutrient removal upgrades to existing onsite sewage treatment and disposal systems. A phased-in approach to replacing the remaining existing systems should be developed with a target completion date of 2010.
- Establish new regional wastewater management entities or modify existing ones to oversee the maintenance of all wastewater discharged from onsite sewage treatment and disposal systems in the study area. These programs should take the privatization approach and contract with existing licensed septic tank contractors.

Proposed Rule 64E-6.001

In June 2005, based on the recommendations of the Wekiva Basin Onsite Sewage Treatment and Disposal System Study, DOH proposed a rule to limit nitrogen input from onsite sewage treatment and disposal systems within the Wekiva Study Area to 10 mg/L. The rule language was modified and republished in November 2005. The proposed rule came under considerable opposition from those who questioned the findings and recommendations in the study, including property owners and builders. Specifically, stakeholders raised concerns whether sufficient data exists on the extent to which onsite sewage treatment and disposal systems directly contribute to increased nitrogen levels in the Wekiva watershed. Based on the lack of a causal link between the systems and nitrogen levels, they argue that the cost of upgrading or replacing conventional systems is not justified.

Further, in a letter dated March 1, 2006, the chair of DOH's Technical Review and Advisory Panel (TRAP)[17] reported that the proposed rule could affect up to 55,000 existing homes and any new construction in the Wekiva Study Area. TRAP estimates that the cost of installing a nitrogen reduction system could be up to $15,000 per household, and a capital/operating/maintenance cost of $189 a month. In the letter, the TRAP panel made the following comments and recommendations regarding the Wekiva and OSTDS:

- The Legislature should appropriate the necessary monies to fund a study to be conducted by the state to identify and quantify the various sources of nitrogen within the Wekiva Study Area (as it is typically done in determining appropriate solutions) and to identify cost-effective options for reducing source impacts. In this regard, the TRAP voted to support legislation during the 2006 legislative session to achieve funding for such outcomes.
- Suggested to the Department of Health to bring back a model proposal for a statewide operation and maintenance program for OSTDS.
- Expressed support for a mandatory once every 5-years pump out of all OSTDS within the Wekiva Study Area and upgrading of all failing systems to present standards if state monies were made available for such upgrades.
- Agreed to assemble a work group to come up with other recommendations or alternatives for improvements in OSTDS that could result in overall reduction of nitrogen from these systems.

Federal Poverty Threshold

There are two slightly different versions of the federal poverty measure:

- The poverty thresholds, and
- The poverty guidelines.

The poverty thresholds are the original version of the federal poverty measure. They are updated each year by the Census Bureau. The thresholds are used mainly for statistical purposes — for instance,

[17] The Technical Review and Advisory Panel (TRAP) is established in s. 381.0068, F.S., for the purpose of assisting DOH in rulemaking and decision making that affects the regulation, location, and technology of onsite sewage treatment and disposal systems in Florida.

preparing estimates of the number of Americans in poverty each year. (In other words, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.) Poverty thresholds since 1980 and weighted average poverty thresholds since 1959 are available on the Census Bureau's Web site.

The poverty guidelines are the other version of the federal poverty measure. They are issued each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use for administrative purposes — for instance, determining financial eligibility for certain federal programs.[18]

2005 HHS Poverty Guidelines

Persons in Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	$ 9,570	$11,950	$11,010
2	12,830	16,030	14,760
3	16,090	20,110	18,510
4	19,350	24,190	22,260
5	22,610	28,270	26,010
6	25,870	32,350	29,760
7	29,130	36,430	33,510
8	32,390	40,510	37,260
For each additional person, add	3,260	4,080	3,750

SOURCE: *Federal Register*, Vol. 70, No. 33, February 18, 2005, pp. 8373-8375.

Effects of Proposed Changes

This bill creates the Wekiva Onsite Disposal System Compliance Grant Program in the Department of Health (DOH). The program would provide grants of up to $10,000 per property to low-income property owners who are using onsite sewage treatment disposal systems in the Wekiva Study Area or the Wekiva River Protection Area. The purpose of the grant program is to assist the property owners in complying with rules developed by DOH, the Department of Environmental Protection (DEP), or the St. Johns Water Management District to enforce compliance with onsite disposal system standards.

The grant program is contingent onan appropriation in the General Appropriations Act.

The bill allows any property owner in the identified areas with an income less than or equal to 200 percent of the federal poverty guidelines to qualify for the grant to offset the cost of constructing, reconstructing, altering, repairing, or modifying any new or existing onsite disposal system to comply with adopted rules. The bill specifies that the grant is in the form of a rebate to the property owner for documented costs associated with complying with the adopted rules.

[18] http://aspe.hhs.gov/poverty/05poverty.shtml The poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

The bill also authorizes DOH to adopt rules for creating forms, implementing procedures, and establishing requirements for the application process and for disbursing grants under this bill and for documenting compliance costs incurred by the property owner; however, the rulemaking shall be suspended until the completion of the study.

The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs. The bill directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs. Both agencies are to submit the reports to the President of the Senate and to the Speaker of the House before the start of the 2007 Regular Session.

The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years. The amendment includes appropriations for the provision and administration of grants under the program and appropriations for the studies required under this amendment.

The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:

- So DEP can conduct the study of various sources of nitrogen into the Wekiva.
- So DOH can contract for the study of the effects of onsite systems on the Wekiva.

C. SECTION DIRECTORY:

Section 1. Creates the Wekiva Onsite Disposal System Compliance Grant Program in DOH; makes implementation subject to an appropriation.

Section 2. Directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs; directs DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs; requires the agencies to submit their reports to the resident of the Senate and the Speaker of the House prior to the 2007 Regular Session; directs DOH to develop rules for a model proposal applying to operation and maintenance of onsite systems.

Section 3. Provides appropriations to DEP and DOH for respective studies.

Section 4. 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:

DOH	FY 06-07	FY 07-08
	$1.896 million	$1.895 million

DOH reports it requires an Environmental Health Program Consultant (SES Pay Grade 425) to administer the program. The base bi-weekly salary for this position would be $1,640.55 (or a base of $42,654.30 annually), with benefits. To administer the grant program there would be recurring costs including application reviews, grant disbursements, mailing, and travel.

The anticipated amount needed for the grant program is based on the current number of repair permits annually in the Wekiva Study Area (583) and percentage of Orange County residents at 200 percent of the federal poverty guidelines from the 2000 census (31.1 percent) for a total of 182 grants per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Low-income private property owners' costs associated with installing new or modifying existing onsite sewage treatment and disposal systems would be offset by a grant award.

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 authorizes the DOH to adopt rules providing forms, procedures and requirements for applying for grants, and to adopt rules for the department to disburse funds and to document compliance costs, and to develop a model proposal relating to onsite system maintenance and operation owner; however, the rulemaking shall be suspended until the completion of the study.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Health Care Appropriations Committee approved three amendments from the bill's sponsor. The amendments:

- Makes the Wekiva Onsite Sewage Treatment and Disposal Compliance System Grant Program contingent on an appropriation in the General Appropriations Act.
- Suspends rule making authority provided to the DOH to adopt rules providing forms, procedures and requirements for applying for grants; to adopt rules for the department to disburse funds; to document compliance costs; and, to develop a model proposal relating to onsite system maintenance and operation owner until after the study is completed.
- The bill appropriates $250,000 to DEP and $250,000 to DOH in General Revenue:
  - So DEP can conduct the study of various sources of nitrogen into the Wekiva.
  - So DOH can contract for the study of the effects of onsite systems on the Wekiva.

On March 29, 2006, the Committee on Environmental Regulation approved one strike all amendment from the bill's sponsor. The difference between the bill as drafted and the strike all is as follows:

- The bill directs the Department of Environmental Protection (DEP) to conduct a study of all sources of nitrogen going into the Wekiva, and requires the study to recommend actions to be taken by DEP, and the St. Johns Water Management District to reduce nitrogen inputs.
- The bill directs the DOH to contract for an independent study of nitrogen sources specifically from onsite sewage treatment and disposal systems into the Wekiva and associated springs.
- The bill directs DOH to develop rules applying to the operation and maintenance of these systems in the Wekiva Study Area and the Wekiva River Protection Area, and at a minimum, requires each onsite sewage disposal and treatment system to be pumped out at least once every five years.
- The bill appropriates an unspecified amount from General Revenue to DEP to conduct the study of various sources of nitrogen into the Wekiva, and to DOH to contract for the study of the effects of onsite systems on the Wekiva.

CHAMBER ACTION

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1 The Health Care Appropriations 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 Wekiva Onsite Sewage Treatment and
8 Disposal System Compliance Grant Program; creating the
9 program in the Department of Health; providing purposes;
10 authorizing certain property owners in certain areas of
11 the Wekiva basin to apply for grants for certain purposes;
12 providing grant limitations; providing for annual
13 adjustments of the amount of the grants; providing for the
14 grant as a rebate of costs incurred; requiring
15 documentation of costs; requiring the Department of Health
16 to adopt rules to administer the grant program; specifying
17 implementation as contingent upon appropriation; requiring
18 the Department of Environmental Protection to conduct a
19 study of sources of nitrogen input into the Wekiva River
20 and associated springs; requiring the Department of Health
21 to contract for an independent study of sources of
22 nitrogen input from onsite sewage treatment and disposal
23 systems into the Wekiva River and associated springs;

24 requiring reports; providing report requirements;
25 suspending certain department rulemaking until study
26 completion; requiring the Department of Environmental
27 Protection and Department of Health to submit copies of
28 the reports to the Legislature; requiring the Department
29 of Health to develop proposed rules for a model proposal
30 applying to operation and maintenance of onsite sewage
31 treatment and disposal systems in certain areas;
32 specifying a rule criterion; providing appropriations;
33 providing an effective date.
34
35 Be It Enacted by the Legislature of the State of Florida:
36
37 Section 1. Wekiva Onsite Sewage Treatment and Disposal
38 System Compliance Grant Program.--
39 (1) The Wekiva Onsite Sewage Treatment and Disposal System
40 Compliance Grant Program is created within the Department of
41 Health, to be administered by the Department of Health. The
42 purpose of the program is to provide grants to low-income
43 property owners in the Wekiva Study Area or the Wekiva River
44 Protection Area using onsite sewage treatment and disposal
45 systems to assist the property owner in complying with rules for
46 onsite sewage treatment and disposal systems developed by the
47 Department of Health, the Department of Environmental
48 Protection, or the St. Johns River Water Management District to
49 enforce compliance with onsite sewage treatment and disposal
50 system standards.

51 (2) Any property owner in the Wekiva Study Area or the
52 Wekiva River Protection Area having an income less than or equal
53 to 200 percent of the federal poverty guideline who is required
54 by rule of the Department of Health, the Department of
55 Environmental Protection, or the St. Johns River Water
56 Management District to construct, reconstruct, alter, repair, or
57 modify any new or existing onsite sewage treatment and disposal
58 system on such property may apply to the Department of Health
59 for a grant to assist the owner with the cost of compliance.
60 (3) The amount of the grant is limited to $10,000 per
61 property and shall be increased each calendar year by the change
62 in the annual average of the "materials and components for
63 construction" series of the producer price index, as calculated
64 and published by the United States Department of Labor, Bureau
65 of Statistics, from the previous calendar year.
66 (4) The grant shall be in the form of a rebate to the
67 property owner for costs incurred in complying with requirements
68 for onsite sewage treatment and disposal systems. The property
69 owner shall provide to the Department of Health in the
70 application for a grant documentation of costs incurred in
71 complying with requirements for such systems.
72 (5) The Department of Health shall adopt rules pursuant to
73 ss. 120.536(1) and 120.54 providing forms, procedures, and
74 requirements for applying for and disbursing grants under this
75 section and for documenting compliance costs incurred.
76 (6) Implementation of this section is contingent upon an
77 appropriation in the General Appropriations Act.

78 Section 2. (1)(a) The Department of Environmental
79 Protection shall conduct a study to determine the various
80 sources of nitrogen input into the Wekiva River and associated
81 springs contributing water to the river. The Department of
82 Environmental Protection shall prepare a report recommending
83 actions to be taken by the Department of Environmental
84 Protection and the St. Johns Water Management District that will
85 provide the best use of economic resources to reduce nitrogen
86 inputs into the river and associated springs.
87 (b) The Department of Health shall contract for a study by
88 an independent entity of sources of input of nitrogen from
89 onsite sewage treatment and disposal systems into the Wekiva
90 River and associated springs. The study shall measure the
91 concentration of nitrates in the soil 10 feet and 20 feet below
92 the drainage field of the onsite sewage treatment and disposal
93 systems. The contract shall require the entity to submit a
94 report to the Department of Health describing the locations of
95 such sources and amounts contributed by such sources and
96 containing recommendations to reduce or eliminate nitrogen
97 inputs from such sources. Rulemaking required by s. 369.318(2),
98 Florida Statutes, shall be suspended until the completion of
99 this study.
100 (c) The Department of Environmental Protection and the
101 Department of Health shall submit copies of the reports to the
102 President of the Senate and the Speaker of the House of
103 Representatives before the 2007 Regular Session of the
104 Legislature.

105 (2) The Department of Health shall develop proposed rules
106 for a model proposal applying to operation and maintenance of
107 onsite sewage treatment and disposal systems within the Wekiva
108 Study Area or the Wekiva River Protection Area. At a minimum,
109 the rules shall require each property owner in the Wekiva Study
110 Area or the Wekiva River Protection Area having an onsite sewage
111 treatment and disposal system to pump out the system at least
112 once every 5 years.
113 Section 3. (1) The sum of $250,000 is appropriated from
114 the General Revenue Fund to the Department of Environmental
115 Protection for the 2006-2007 fiscal year to be used by the
116 Department of Environmental Protection to conduct the study
117 required under paragraph (1)(a) of section 2.
118 (2) The sum of $250,000 is appropriated from the General
119 Revenue Fund to the Department of Health for the 2006-2007
120 fiscal year to be used for purposes of the independent study the
121 Department of Health is required to contract for under paragraph
122 (1)(b) of section 2.
123 Section 4. This act shall take effect July 1, 2006.

HB 7133 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7133 CS PCB ENVR 06-05 Solid Waste
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
1) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Dixon	Dixon
2) State Resources Council		Kliner	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and addresses other issues which have arisen since the last major rewrite of the Solid Waste Management Act (SWMA). For instance, the bill:

- Deletes obsolete definitions, and alphabetizes and consolidates remaining definitions
- Deletes obsolete language relating to Class II landfills and compost standards
- Clarifies the circumstances under which industrial byproducts are not regulated under the SWMA
- Deletes provisions relating to biomedical incinerators
- Provides for the management of storm-generated debris.

The bill also proposes numerous amendments relating to the regulation of hazardous waste, for instance:

- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits
- Deletes a requirement for a separate report on hazardous waste management
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities
- Clarifies the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance
- Reduces the local match requirement for local governments in order to receive certain hazardous waste collection grants, and provides exceptions from the match requirement.

Further, the bill adjusts the criteria for the water projects grant program.

See Part I.B., EFFECT OF PROPOSED CHANGES, for a complete list of changes proposed by the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Solid Waste Management Act (SWMA) was enacted in 1988 to provide comprehensive programs to promote recycling and reduce the volume of materials going to landfills. The SWMA mandated waste minimization, conservation of landfill space, litter control, and recycling and required the involvement and cooperation of Florida's residents, businesses, and visitors. Several state agencies were given responsibilities under SWMA with the Department of Environmental Regulation having the lead responsibility for developing the state program, adopting all regulations and standards, permitting facilities, and managing biohazardous waste.

A major provision of the SWMA required all counties to initiate recycling programs to separate and offer for recycling a majority of aluminum cans, glass, newspaper, and plastic bottles.

As part of their recycling programs, local governments were encouraged to separate all plastics, metals, and all grades of paper for recycling prior to final disposal and were also encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

Counties were required to achieve a waste reduction goal of 30 percent by 1994. No more than one-half of the goal could be met with yard trash, white goods (primarily discarded appliances), construction and demolition (C&D) debris, and tires. The goal could be modified or reduced for any county that demonstrated it would have an adverse impact on the financial obligations of the county regarding waste to energy facilities (WTE).

To assist the counties in their recycling efforts, the SWMA established certain grant programs. The types of grants available included small county grants, recycling and education grants, waste tire grants, and litter and marine debris prevention grants.

The SWMA also provided for a waste newsprint fee, a waste tire fee, and the implementation of an advance disposal fee if certain recycling conditions were not met.

The Solid Waste Management Trust Fund (SWMTF) was created to fund solid waste management activities.

In 1993, the SWMA was significantly rewritten to update and refine the act. Major features of this rewrite included:

- Creating the Recycling Markets Advisory Committee in the Department of Commerce.[1]
- Providing significant new provisions relating to the advance disposal fee and statewide litter program. Initially, the advanced disposal fee was 1 cent per container with an increase to 2 cents on January 1, 1995. The estimated proceeds of the fee ($22 million) were deposited into the SWMTF to be used to supplement recycling grants, Surface Water Improvement and Management or SWIM program, Sewage Treatment Revolving Loan, and Small Community Sewer Construction Assistance. The advance disposal fee and the waste newsprint fee provisions expired on October 1, 1995, as provided in ch. 88-130, Laws of Florida.
- Providing new requirements for permitting WTE facilities and commercial hazardous waste incinerators in the state. No commercial hazardous waste incinerator may be permitted or certified in the state without a certificate of need, issued by the Governor and Cabinet, sitting as the Statewide Multipurpose Hazardous Waste Facility Siting Board.
- Establishing the Florida Packaging Council and creating a comprehensive litter and marine debris control and prevention program.
- Providing assistance to smaller counties to aid in meeting their waste reduction and recycling responsibilities.
- Providing for the ownership of solid waste and flow control.
- Providing for the disposal of certain batteries.
- Allowing the SWMTF to be used to fund projects relating to market development for recycled materials.
- Allowing counties of less than 50,000 to be eligible for annual solid waste grants of $50,000.

Another significant revision to the SWMA occurred in 1996 when the provisions relating to construction and demolition (C&D) debris were substantially revised. These provisions included requiring the Department of Environmental Protection (DEP) to establish a separate category for solid waste management facilities which accept only C&D debris for disposal or recycling; and providing that the DEP may not require liners and leachate collection systems at individual facilities unless it demonstrates that the facility is reasonably expected to result in violations of ground water standards. A permit is not required for disposal of C&D debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

For several years, approximately $30 million was appropriated annually from the SWMTF and used for water quality and restoration projects. As a result, the Legislature in 2002 provided for the permanent reallocation of the sales tax proceeds that were being deposited into the SWMTF. These funds (approximately $30 M annually) are now deposited into the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects. The SWMTF is now funded almost exclusively from the waste disposal fees imposed on tires purchased at retail. This fee generates approximately $19 million annually and supports not only the grants program, but also the general solid waste activities of the Division of Waste Management.

Also, the counties are no longer required to annually submit to the DEP certain solid waste and recycling information. Instead, the DEP may periodically seek the information from the counties to evaluate and report on the success of meeting the solid waste reduction goal.

Counties must still implement a recyclable materials recycling program; however, the counties are no longer required to recover a majority of the minimum five. Instead, they are encouraged to recover a significant portion of at least four of the following materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

[1] The Department of Commerce was abolished in 1996 pursuant to ch. 96-320, L.O.F.

The 2002 revisions to the SWMA also:

- Deleted specific language regarding the amount of C&D debris, yard trash, white goods, and tires that may be considered when determining the 30 percent waste reduction goal.
- Redefined "small county" from 75,000 to 100,000 for purposes of providing an opportunity to recycle in lieu of achieving the 30-percent goal.
- Required C&D debris to be separated from the solid waste stream in separate locations at a solid waste disposal facility or other permitted site.
- Refocused the purposes of the SWMTF toward the core solid waste management responsibilities of the DEP and created a new competitive and innovative solid waste management grant program. It also maintained funding for the mosquito control activities in Department of Agriculture and Consumer Services (DACS).
- Redistributed the funds in the SWMTF
  - Up to 40 percent for funding solid waste activities of the DEP and other state agencies.
  - Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
  - Up to 11 percent to DACS for mosquito control.
  - A minimum of 40 percent for funding a competitive and innovative grant program relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

- Provided for the distribution of the available solid waste management grants funds:
  - Up to 15 percent for the competitive and innovative grant program.
  - Up to 35 percent for the consolidated grant program for small counties.
  - Up to 50 percent for the waste tire program.

- Directed DEP to use the $30 million annually transferred from the sales tax proceeds to the Ecosystem Management and Restoration TF for projects to improve water quality and restore lakes and rivers impacted by pollution. At least 20 percent of the funds available are to be used for projects that assist financially disadvantaged small local governments.

The most recent revisions to the SWMA were made in 2005 and included the following:

- Prior to the construction of a new WTE facility or the expansion of an existing WTE, the county must implement and maintain a solid waste management and recycling program designed to meet the 30 percent waste reduction goal. If a WTE is built in a county with a population of less than 100,000 that county would have to have a program designed to achieve the 30 percent waste reduction goal, and not just provide the opportunity to recycle.
- Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider the construction of a WTE facility as an alternative to additional landfill space.
- Clarified that local governmental entities are required to pay the waste tire fee and the lead-acid battery fee.
- Increased the penalty for a litter violation from $50 to $100. The $50 increase is to be deposited into the SWMTF to be used for the solid waste management grant program.
- Provided for a pilot project to encourage the reuse or recycling of campaign signs. The recovered campaign signs are to be made available to schools and other entities that may have a use for them, at no cost.

The last time the Solid Waste Management Act was substantially rewritten was in 1993. Although there have been several amendments to the statutory provisions since that time, these amendments have been piecemeal and the issues have not been addressed in a comprehensive manner. In the past few

years, issues have arisen regarding recycling and disposal of vegetative and construction and demolition debris. This problem has been exacerbated by the fact that Florida was hit with four major hurricanes in 2004 and by Hurricanes Dennis, Katrina, and Wilma in 2005.

The solid waste provisions in the statutes contain several provisions that need to updated to delete obsolete provisions and dates that have expired. Some provisions have never been used and certain provisions are no longer needed.

The Senate Environmental Preservation Committee was assigned an interim project to review the Solid Waste Management Act and make recommendations to the Legislature to update the act and make recommendations to address issues that have recently arisen.

Effect of Proposed Changes

This bill would implement the recommendations of the Senate Environmental Preservation Committee's interim report no. 2006-121, Review of the Solid Waste Management Act. The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and address other issues which have arisen since the last major rewrite of the Solid Waste Management Act. Specifically, the bill:

- Deletes the provisions relating to Keep Florida Beautiful, Inc., and transfers the Wildflower Advisory Council that was created within Keep Florida Beautiful to the Department of Agriculture and Consumer Services (DACS). Provides that the use fees from the sale of the Wildflower license, and transfers the unexpended proceeds from the Wildflower license plates which are held by Keep Florida Beautiful to the DACS.
- Places the Adopt-a-Shore Program that was created within Keep Florida Beautiful in the Department of Environmental Protection (DEP).
- Alphabetizes the definitions used in the Solid Waste Management Act. Deletes obsolete definitions and consolidates definitions that are found elsewhere in the act.
- Deletes obsolete language relating to Class II landfills and compost standards.
- Clarifies the circumstances under which industrial byproducts are not regulated under the Solid Waste Management Act.
- Deletes provisions relating to biomedical incinerators.
- Provides for the management of storm-generated debris.
- Deletes the specific percentage allocations for the use of the funds in the Solid Waste Management Trust Fund.
- Places time restrictions on certain liens imposed by the DEP.
- Provides that escrow accounts may only be used by government-owned solid waste facilities to meet the financial requirements for closure. Provides for grandfathering of certain facilities.
- Deletes the provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities.
- Revises the definition of "waste tire" and "waste tire processing facility."
- Exempts certain tire businesses from having to obtain a tire storage permit.
- Extends the duration of certain solid and hazardous waste research, development, and demonstration permits.
- Deletes a requirement for a separate report on hazardous waste management.
- Authorizes the DEP to issue authorizations which include both permits and clean closure orders for hazardous waste facilities.
- Clarifies the provisions relating to the posting of signs on certain properties contaminated by hazardous wastes.
- Allows the DEP to issue orders requiring the prompt abatement of an imminent hazard caused by a hazardous substance.
- Reduces the local match requirement for local governments in order to receive certain hazardous waste collection grants, and provides exceptions from the match requirement.

- Repeals a provision relating to the submission of certain solid waste facility construction and operation plans.
- Repeals the requirement for a separate used oil report.
- Repeals the provisions relating to the Multipurpose Hazardous Waste Facility Siting Act.
- Changes the criteria for the water projects grant program.

C. SECTION DIRECTORY:

This bill would implement the recommendations of the Senate Environmental Preservation Committee's interim report no. 2006-121, Review of the Solid Waste Management Act. The bill makes a number of technical amendments to correct cross-references, delete certain obsolete provisions and dates from the solid waste management statutes, and address other issues which have arisen since the last major rewrite of the Solid Waste Management Act.

Section 1. Section 403.413, F.S., is amended to clarify who is liable for dumping under the litter law.

Section 2. Section 403.4131, F.S., is amended to delete the statutory provisions relating to Keep Florida Beautiful, Inc. The Wildflower Advisory Council that was created within Keep Florida Beautiful, Inc. is recreated within the Department of Agriculture and Consumer Services (DACS). The Council membership is increased from nine members to ten members to include a representative of the DACS. The Council will be advisory to the DACS and shall develop procedures of operation, research contracts, educational and marketing programs, and wildflower planting grants for Florida native wildflowers, plants, and grasses. The Council shall also make recommendations to the DACS concerning what constitutes acceptable species of wildflowers and other plants supported by these programs.

Section 3. Section 403.41315, F.S., is amended to conform to the changes in s. 403.4135, F.S., relating to Keep Florida Beautiful, Inc.

Section 4. Section 403.4133, F.S., is amended to place the Adopt-a-Shore Program that was created within Keep Florida Beautiful, Inc. in the Department of Environmental Protection.

Section 5. Section 320.08058, F.S., is amended to provide that the annual use fees from the sale of the Wildflower license plates shall now be distributed to the DACS.

Section 6. All unexpended proceeds of the fees paid for the Wildflower license plates which are held by Keep Florida Beautiful, Inc. must be transferred to the DACS promptly after the effective date of this act.

Section 7. Section 403.703, F.S., is amended to place the definitions used in the Solid Waste Management Act in alphabetical order. In addition, the following definitions are also amended: "clean debris", "closure", and "yard trash." The following definitions are deleted: "biomedical waste generator" and "palletized paper waste"; and the definition of "landfill" is moved from s. 403.7125, F.S.

Section 8. Subsection (69) of section 316.003, F.S., is amended to correct a statutory cross reference.

Section 9. Paragraph (f) of subsection (2) of section 377.709, F.S., is amended to correct a statutory cross reference.

Section 10. Subsection (1) of section 487.048, F.S., is amended to correct a statutory cross reference.

Section 11. Section 403.704, F.S., is amended to delete certain obsolete language and dates relating to the Department of Environmental Protection's (DEP) powers and duties. Such provisions include:

- Holding public hearings to develop rules to implement the state's solid waste management program. This is obsolete because rulemaking provisions of s. 120.54, F.S., include workshops and hearings.
- Charging certain fees for certain solid waste management services. The DEP does not provide solid waste management services.
- Acquiring personal or real property for the purpose of providing sites for solid waste management facilities. The DEP does not provide sites for solid waste management facilities.
- Receiving funds from the sale of certain products, materials, fuel, or energy from any state-owned or operated solid waste facility. The DEP does not operate solid waste management facilities.
- Deleting certain requirements for Class II landfills. There are no longer Class II landfills being permitted in Florida.
- Conducting solid waste research to be used in the implementation of certain landfill closure rules. Landfill closure methods have been developed and the rules have been in place for nearly 20 years.
- Authorizing variances from the solid waste closure rules. Variances are already allowed under s. 403.201, F.S., and s. 120.54, F.S., for any solid waste rule, not just closure rules.

Section 12. Section 403.7043, F.S., is amended to delete obsolete language relating to compost standards rulemaking.

Section 13. Section 403.7045, F.S., is amended to clarify that industrial byproducts are not regulated under the Solid Waste Management Act if those byproducts are not discharged, deposited, injected, dumped, spilled, leaked or placed upon any land or water so that they constitute a threat of environmental contamination or pose a significant threat to public health.

Also, certain dredged material that is generated as part of a project permitted under part IV of ch. 373, F.S., or ch. 161, F.S., or that is authorized to be removed from sovereign submerged lands under ch. 253, F.S., shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as a hazardous waste.

Section 14. Section 403.707, F.S., is amended to allow the DEP to exempt, by rule, certain facilities from the requirement for a permit if the construction or operation of the facility is not expected to create any significant threat to the environment or public health. An example would include the registration of yard trash processing facilities. For purposes of Part IV of ch. 403, F.S., (Resource Recovery and Management), and only when specified by DEP rule, permits may include other forms of licenses as defined in s. 120.52, F.S. This is intended to address an issue the Joint Administrative Procedures Committee has raised regarding DEP's authority to provide such exemptions, even if they are technically justified.

Provisions relating to biomedical incinerators are deleted. Biomedical incinerators are currently regulated under DEP's air rules.

Counties may exempt certain wood material from the definition of "construction and demolition debris" under certain conditions to promote an integrated solid waste management program.

Section 15. Section 403.7071, F.S., is created to provide for the management of storm-generated debris resulting from a storm event that is the subject of an emergency order by the DEP.

The DEP may issue field authorizations for staging areas in those counties affected by a storm event. These staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. A local government shall avoid

locating a staging area in wetlands and other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of use of the area.

Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, or a permitted C&D debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.

C&D debris that is mixed with other storm-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. C&D debris that is source-separated or separated from other hurricane-generated debris at an authorized staging area, may be managed at a permitted C&D debris disposal or recycling facility upon approval by the DEP of the methods and operations practices used to inspect the waste during segregation.

Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.

Local governments may conduct the burning of storm-generated yard trash and other vegetative debris in air-curtain incinerators without prior notice to the DEP. Demolition debris may also be burned in air-curtain incinerators if the material is limited to untreated wood. Within 10 days after commencing such burning, the local government must provide certain information to the DEP. The operator of the air-curtain incinerator is subject to any requirement to obtain an open burning authorization from the Division of Forestry of the DACS or any other agency empowered to grant such authorization.

Section 16. Section 403.708, F.S., is amended to delete some obsolete dates and to delete the term "degradable" because the term is not used in this section.

Section 17. Section 403.709, F.S., is amended to delete the specific percentages for the use of the funds in the Solid Waste Management Trust Fund (SWMTF). The current percentages were adopted by the Legislature in 2002 when a significant source of funding for the SWMTF was statutorily transferred to fund various water projects. The SWMTF'S purposes were refocused toward the core solid waste management responsibilities of the DEP and the funding percentages were to apply to: funding the DEP's solid waste activities; research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management; mosquito control activities in the Department of Agriculture and Consumer Services; litter prevention; and certain competitive and innovative grant programs. The percentages were to apply unless otherwise specified in the General Appropriations bill. These specific percentages have not been used in the General Appropriations bill.

This section is also amended to place time restrictions on certain liens imposed by the DEP.

Section 18. Section 403.7095, F.S., is amended to correct a cross-reference.

Section 19. Section 403.7125, F.S., is amended to delete the definitions of "landfill" and "closure" from this section. These definitions appear in s. 403.704, F.S.

The bill limits the use of an escrow account for the closure of a landfill to those landfills owned or operated by a local or state government or the Federal Government. Privately owned or operated landfills must provide other means of financial responsibility for the closure of landfills. However, any landfill owner or operator that had established an escrow account in accordance with the escrow provisions of this section and the conditions of its permit prior to January 1, 2006, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide other means of financial assurance to the DEP in lieu of the escrow account.

Section 20. Section 403.716, F.S., is amended to delete provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or facilities. The operators of these facilities are subject to the DEP's rules relating to training requirements under air permits. There has never been a separate solid waste training program for these operators.

Section 21. Section 403.717, F.S., is amended to revise the definitions of "waste tire" and "waste tire processing facility." The term "waste tire" will not include solid rubber tires and tires that are inseparable from the rim. These constitute a small percentage of the discarded tires and these tires are not amenable to recycling. Further, they pose little threat of fire, floating in standing water, or mosquito breeding.

The term "waste tire processing facility" is amended to provide consistency with the term "processed tire."

The provisions requiring a tire storage permit for a tire retreading business where fewer than 1,500 waste tires are kept on the premises is deleted. Currently, no permit is needed for storage of less than 1,500 tires anywhere.

Section 22. Section 403.7221, F.S., is amended, transferred, and renumbered as s. 403.70715, F.S. The DEP is allowed to issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility, including any hazardous waste management facility who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been adopted.

The time periods for such permits is extended from 1 year to 3 years, renewable no more than 3 times. This would remove a conflict with a similar Environmental Protection Agency rule regarding their research, development, and demonstration permits.

Section 23. Subsection (2) of section 403.201, F.S., is amended to correct a statutory cross reference.

Section 24. Section 403.722, F.S., is amended to clarify who must obtain a permit to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility. This section is also amended to provide for authorizations issued by the DEP to include both permits and clean closure orders.

The bill further clarifies that if an owner or operator of a hazardous waste facility intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

Section 25. Section 403.7226, F.S., is amended to delete a separate report on hazardous waste management. This information is included in the DEP's Solid Waste Management in Florida report.

Section 26. Section 403.724, F.S., is amended to provide that authorizations for hazardous waste facilities include both permits and clean closure plan orders. Further, the amount of financial responsibility that is required for hazardous waste facilities includes the probable costs of properly closing the facility and performing corrective action.

Section 27. Section 403.7255, F.S., is amended to clarify that signs must be placed by the owner or operator at any site in the state which is listed or proposed for listing on the Superfund Site List or any site identified by the DEP as a site contaminated by hazardous waste where this is a risk of exposure to the public. The DEP shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations.

Section 28. Section 403.726, F.S., is amended to allow the DEP to issue an order requiring the prompt abatement of an imminent hazard caused by a hazardous substance. Currently, the DEP may only issue a permit to abate such hazards.

Section 29. Section 403.7265, F.S., is amended to require that local governments match 25 percent of the grant amount for certain hazardous waste collection grants. Currently, eligible local governments may receive up to $50,000 in grant funds for unique and innovative projects that improve the collection of hazardous waste and lower the incidence of improper management of conditionally exempt or household waste, provided they match the grant amount. This bill would reduce the local match requirement to 25 percent of the grant amount; however, if the DEP finds that the project has statewide applicability and has immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required.

Section 30. Section 403.885, F.S., is amended to adjust the criteria for the water projects grant program.

Section 31. Section 373.1961, F.S., is amended to correct a cross-reference.

Section 32. Sections 403.7075, 403.756, 403.78, 403,781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, F.S., relating to the Statewide Multipurpose Hazardous Waste Facility Siting Act, are repealed. This act has never been used and it is unlikely that a facility will ever be sited in Florida using these provisions. The repeal of s. 403.7075, F.S., relating to the submission of plans by certain persons to construct and operate a solid waste facility, is due to a conflict with the provisions in ch. 471, F.S., which regulates professional engineers. The repeal of s. 403.756, F.S., relating to a used oil report, is due to the fact that this information will be included in the DEP's Solid Waste Management in Florida report.

Section 33. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is not anticipated to be an economic impact on the general public. Many of the bill's provisions remove outdated or obsolete provisions and clarify several provisions as they relate to local governments and the Department of Environmental Protection.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Wildflower Advisory Council will now become advisory to the Department of Agriculture and Consumer Services (DACS). On the effective date of this act, the unexpended balance of the Wildflower license plates use fees will be transferred to the DACS. As of December 31, 2005, the balance, as reported by the Wildflower Advisory Council, is $690,095.62.

The Department of Environmental Protection will no longer be required to submit separate reports regarding hazardous waste management and used oil. This information will be consolidated in the department's Solid Waste Management in Florida report, thereby potentially saving personnel time and publication costs.

In order to be eligible to receive a hazardous waste collection grant, local governments currently must match the entire grant amount. This bill reduces the match requirement to 25 percent of the grant amount, and allows the match to be waived under certain circumstances. This may permit more local governments to take advantage of this grant program.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment to adjust the criteria for the water projects grant program.

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
7 A bill to be entitled
8 An act relating to environmental protection; amending s.
9 403.413, F.S.; clarifying who is liable for dumping under
10 the Florida Litter Law; amending s. 403.4131, F.S.;
11 deleting the provisions relating to Keep Florida
12 Beautiful, Inc.; providing that certain counties are
13 encouraged to develop a regional approach to coordinating
14 litter control and prevention programs; deleting certain
15 requirements for a litter survey; placing the Wildflower
16 Advisory Council under the control of the Department of
17 Agriculture and Consumer Services; revising the duties of
18 the council; amending s. 403.41315, F.S.; conforming
19 provisions to changes made to the Keep Florida Beautiful,
20 Inc., program; amending s. 403.4133, F.S.; placing the
21 Adopt-a-Shore Program within the Department of
22 Environmental Protection; amending s. 320.08058, F.S.;
23 requiring that the proceeds of the fees paid for

24 Wildflower license plates be distributed to the Department
25 of Agriculture and Consumer Services; specifying uses of
26 the proceeds; transferring the balance of such proceeds
27 from Keep Florida Beautiful, Inc., to the Department of
28 Agriculture and Consumer Services; amending s. 403.703,
29 F.S.; reordering definitions in alphabetical order;
30 clarifying certain definitions and deleting definitions
31 that are not used; amending ss. 316.003, 377.709, and
32 487.048, F.S.; conforming cross-references; amending s.
33 403.704, F.S.; deleting certain obsolete provisions
34 relating to the state solid waste management program;
35 amending s. 403.7043, F.S.; deleting certain obsolete and
36 conflicting provisions relating to compost standards;
37 amending s. 403.7045, F.S.; providing that industrial
38 byproducts are not regulated under certain circumstances;
39 conforming a cross-reference; clarifying certain
40 provisions governing dredged material; amending s.
41 403.707, F.S.; clarifying the Department of Environmental
42 Preservation's permit authority; deleting certain obsolete
43 provisions; creating s. 403.7071, F.S.; providing for the
44 management and disposal of storm-generated debris;
45 amending s. 403.708, F.S.; deleting obsolete provisions
46 and clarifying certain provisions governing landfills;
47 amending s. 403.709, F.S.; revising the provisions
48 relating to the distribution of the waste tire fees;
49 amending s. 403.7095, F.S., relating to the solid waste
50 management grant program; conforming a cross-reference;
51 amending s. 403.7125, F.S.; deleting certain definitions

52 that appear elsewhere in law and clarifying certain
53 financial-disclosure provisions with respect to the
54 closure of a landfill; amending s. 403.716, F.S.; deleting
55 certain provisions relating to the training of certain
56 facility operators; amending s. 403.717, F.S.; clarifying
57 the provisions relating to waste tires and the processing
58 of waste tires; transferring, renumbering, and amending s.
59 403.7221, F.S.; increasing the duration of certain
60 research, development, and demonstration permits; amending
61 s. 403.201, F.S.; conforming a cross-reference; amending
62 s. 403.722, F.S.; clarifying provisions relating to who is
63 required to obtain certain hazardous waste permits;
64 amending s. 403.7226, F.S.; deleting a provision requiring
65 a report that is duplicative of other reports; amending s.
66 403.724, F.S.; clarifying certain financial-responsibility
67 provisions; amending s. 403.7255, F.S.; providing
68 additional requirements regarding the public notification
69 of certain contaminated sites; amending s. 403.726, F.S.;
70 authorizing the Department of Environmental Protection to
71 issue an order to abate certain hazards; amending s.
72 403.7265, F.S.; requiring a local government to provide
73 matching funds for certain grants; providing that matching
74 funds are not required under certain conditions; amending
75 s. 403.885, F.S.; revising grant program eligibility
76 requirements for certain water management and restoration
77 projects; eliminating requirements for certain funding and
78 legislative review of such projects; amending s. 373.1961,
79 F.S.; conforming a cross-reference; repealing s. 403.7075,

80 F.S., relating to the submission of certain plans for
81 solid waste management facilities; repealing s. 403.756,
82 F.S., relating to an annual used-oil report; repealing ss.
83 403.78, 403.781, 403.782, 403.783, 403.784, 403.7841,
84 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872,
85 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892,
86 403.7893, and 403.7895, F.S., relating to the Statewide
87 Multipurpose Hazardous Waste Facility Siting Act;
88 providing an effective date.
89
90 Be It Enacted by the Legislature of the State of Florida:
91
92 Section 1. Subsection (4) of section 403.413, Florida
93 Statutes, is amended to read:
94 403.413 Florida Litter Law.--
95 (4) DUMPING LITTER PROHIBITED.--Unless otherwise
96 authorized by law or permit, it is unlawful for any person to
97 dump litter in any manner or amount:
98 (a) In or on any public highway, road, street, alley, or
99 thoroughfare, including any portion of the right-of-way thereof,
100 or any other public lands, except in containers or areas
101 lawfully provided therefor. When any litter is thrown or
102 discarded from a motor vehicle, the operator or owner of the
103 motor vehicle, or both, shall be deemed in violation of this
104 section;
105 (b) In or on any freshwater lake, river, canal, or stream
106 or tidal or coastal water of the state, including canals. When
107 any litter is thrown or discarded from a boat, the operator or

108 owner of the boat, or both, shall be deemed in violation of this
109 section; or
110 (c) In or on any private property, unless prior consent of
111 the owner has been given and unless the dumping of such litter
112 by such person will not cause a public nuisance or otherwise be
113 in violation of any other state or local law, rule, or
114 regulation.
115 Section 2. Section 403.4131, Florida Statutes, is amended
116 to read:
117 403.4131 Litter control; Wildflower Advisory Council ~~"Keep~~
118 ~~Florida Beautiful, Incorporated"; placement of signs~~.--
119 ~~(1) It is the intent of the Legislature that a coordinated~~
120 ~~effort of interested businesses, environmental and civic~~
121 ~~organizations, and state and local agencies of government be~~
122 ~~developed to plan for and assist in implementing solutions to~~
123 ~~the litter and solid waste problems in this state and that the~~
124 ~~state provide financial assistance for the establishment of a~~
125 ~~nonprofit organization with the name of "Keep Florida Beautiful,~~
126 ~~Incorporated," which shall be registered, incorporated, and~~
127 ~~operated in compliance with chapter 617. This nonprofit~~
128 ~~organization shall coordinate the statewide campaign and operate~~
129 ~~as the grassroots arm of the state's effort and shall serve as~~
130 ~~an umbrella organization for volunteer-based community programs.~~
131 ~~The organization shall be dedicated to helping Florida and its~~
132 ~~local communities solve solid waste problems, to developing and~~
133 ~~implementing a sustained litter prevention campaign, and to act~~
134 ~~as a working public-private partnership in helping to implement~~
135 ~~the state's Solid Waste Management Act. As part of this effort,~~

136 ~~Keep Florida Beautiful, Incorporated, in cooperation with the~~
137 ~~Environmental Education Foundation, shall strive to educate~~
138 ~~citizens, visitors, and businesses about the important~~
139 ~~relationship between the state's environment and economy. Keep~~
140 ~~Florida Beautiful, Incorporated, is encouraged to explore and~~
141 ~~identify economic incentives to improve environmental~~
142 ~~initiatives in the area of solid waste management. The~~
143 ~~membership of the board of directors of this nonprofit~~
144 ~~organization may include representatives of the following~~
145 ~~organizations: the Florida League of Cities, the Florida~~
146 ~~Association of Counties, the Governor's Office, the Florida~~
147 ~~Chapter of the National Solid Waste Management Association, the~~
148 ~~Florida Recyclers Association, the Center for Marine~~
149 ~~Conservation, Chapter of the Sierra Club, the Associated~~
150 ~~Industries of Florida, the Florida Soft Drink Association, the~~
151 ~~Florida Petroleum Council, the Retail Grocers Association of~~
152 ~~Florida, the Florida Retail Federation, the Pulp and Paper~~
153 ~~Association, the Florida Automobile Dealers Association, the~~
154 ~~Beer Industries of Florida, the Florida Beer Wholesalers~~
155 ~~Association, and the Distilled Spirits Wholesalers.~~
156 ~~(2) As a partner working with government, business, civic,~~
157 ~~environmental, and other organizations, Keep Florida Beautiful,~~
158 ~~Incorporated, shall strive to assist the state and its local~~
159 ~~communities by contracting for the development of a highly~~
160 ~~visible antilitter campaign that, at a minimum, includes:~~
161 ~~(a) Coordinating with the Center for Marine Conservation~~
162 ~~and the Center for Solid and Hazardous Waste Management to~~

163 ~~identify components of the marine debris and litter stream and~~
164 ~~groups that habitually litter.~~
165 ~~(b) Designing appropriate advertising to promote the~~
166 ~~proper management of solid waste, with emphasis on educating~~
167 ~~groups that habitually litter.~~
168 ~~(c) Fostering public awareness and striving to build an~~
169 ~~environmental ethic in this state through the development of~~
170 ~~educational programs that result in an understanding and in~~
171 ~~action on the part of individuals and organizations about the~~
172 ~~role they must play in preventing litter and protecting~~
173 ~~Florida's environment.~~
174 ~~(d) Developing educational programs and materials that~~
175 ~~promote the proper management of solid waste, including the~~
176 ~~proper disposal of litter.~~
177 ~~(e) Administering grants provided by the state. Grants~~
178 ~~authorized under this section shall be subject to normal~~
179 ~~department audit procedures and review.~~
180 (1) ~~(3)~~ The Department of Transportation shall establish an
181 "adopt-a-highway" program to allow local organizations to be
182 identified with specific highway cleanup and highway
183 beautification projects authorized under s. 339.2405 ~~and shall~~
184 ~~coordinate such efforts with Keep Florida Beautiful, Inc~~. The
185 department shall report to the Governor and the Legislature on
186 the progress achieved and the savings incurred by the "adopt-a-
187 highway" program. The department shall also monitor and report
188 on compliance with provisions of the adopt-a-highway program to
189 ensure that organizations that participate in the program comply
190 with the goals identified by the department.

191 (2) ~~(4)~~ The Department of Transportation shall place signs
192 discouraging litter at all off-ramps of the interstate highway
193 system in the state. ~~The department shall place other highway~~
194 ~~signs as necessary to discourage littering through use of the~~
195 ~~antilitter program developed by Keep Florida Beautiful,~~
196 ~~Incorporated.~~
197 (3) ~~(5)~~ Each county is encouraged to initiate a litter
198 control and prevention program or to expand upon its existing
199 program. The department shall establish a system of grants for
200 municipalities and counties to implement litter control and
201 prevention programs. In addition to the activities described in
202 subsection (1), such grants shall at a minimum be used for
203 litter cleanup, grassroots educational programs involving litter
204 removal and prevention, and the placement of litter and
205 recycling receptacles. Counties are encouraged to form working
206 public private partnerships as authorized under this section to
207 implement litter control and prevention programs at the
208 community level. The grants authorized pursuant to this section
209 shall be incorporated as part of the recycling and education
210 grants. Counties that have a population under 100,000 ~~75,000~~ are
211 encouraged to develop a regional approach to administering and
212 coordinating their litter control and prevention programs.
213 ~~(6) The department may contract with Keep Florida~~
214 ~~Beautiful, Incorporated, to help carry out the provisions of~~
215 ~~this section. All contracts authorized under this section are~~
216 ~~subject to normal department audit procedures and review.~~
217 ~~(7) In order to establish continuity for the statewide~~
218 ~~program, those local governments and community programs~~

219 ~~receiving grants for litter prevention and control must use the~~
220 ~~official State of Florida litter control or campaign symbol~~
221 ~~adopted by Keep Florida Beautiful, Incorporated, for use on~~
222 ~~various receptacles and program material.~~
223 ~~(8) The Legislature establishes a litter reduction goal of~~
224 ~~50 percent reduction from the period January 1, 1994, to January~~
225 ~~1, 1997. The method of determination used to measure the~~
226 ~~reduction in litter is the survey conducted by the Center for~~
227 ~~Solid and Hazardous Waste Management. The center shall consider~~
228 ~~existing litter survey methodologies.~~
229 ~~(9) The Department of Environmental Protection shall~~
230 ~~contract with the Center for Solid and Hazardous Waste~~
231 ~~Management for an ongoing annual litter survey, the first of~~
232 ~~which is to be conducted by January 1, 1994. The center shall~~
233 ~~appoint a broad-based work group not to exceed seven members to~~
234 ~~assist in the development and implementation of the survey.~~
235 ~~Representatives from the university system, business,~~
236 ~~government, and the environmental community shall be considered~~
237 ~~by the center to serve on the work group. Final authority on~~
238 ~~implementing and conducting the survey rests with the center.~~
239 ~~The first survey is to be designed to serve as a baseline by~~
240 ~~measuring the amount of current litter and marine debris, and is~~
241 ~~to include a methodology for measuring the reduction in the~~
242 ~~amount of litter and marine debris to determine the progress~~
243 ~~toward the litter reduction goal established in subsection (8).~~
244 ~~Annually thereafter, additional surveys are to be conducted and~~
245 ~~must also include a methodology for measuring the reduction in~~

246 ~~the amount of litter and for determining progress toward the~~
247 ~~litter reduction goal established in subsection (8).~~
248 (4) ~~(10)~~ (a) There is created within the Department of
249 Agriculture and Consumer Services ~~within Keep Florida Beautiful,~~
250 ~~Inc.,~~ the Wildflower Advisory Council, consisting of a maximum
251 of ten ~~nine~~ members ~~to direct and oversee the expenditure of the~~
252 ~~Wildflower Account~~. The Wildflower Advisory Council shall
253 include a representative from the University of Florida
254 Institute of Food and Agricultural Sciences, the Florida
255 Department of Transportation, the Department of Agriculture and
256 Consumer Services, ~~and~~ the Florida Department of Environmental
257 Protection, the Florida League of Cities, and the Florida
258 Association of Counties. Other members of the committee may
259 include representatives from the Florida Federation of Garden
260 Clubs, Inc., Think Beauty Foundation, the Florida Chapter of the
261 American Society of Landscape Architects, Inc., and a
262 representative of the Master Gardener's Program.
263 (b) The Wildflower Advisory Council shall advise the
264 Department of Agriculture and Consumer Services and develop
265 procedures of operation, research contracts, educational and
266 marketing programs, and wildflower planting grants for Florida
267 native wildflowers, plants, and grasses. The council shall also
268 make recommendations to the department concerning ~~the final~~
269 ~~determination of~~ what constitutes acceptable species of
270 wildflowers and other plantings supported by these programs.
271 Section 3. Section 403.41315, Florida Statutes, is amended
272 to read:

273 403.41315 Comprehensive illegal dumping, litter, and
274 marine debris control and prevention.--
275 (1) The Legislature finds that a comprehensive illegal
276 dumping, litter, and marine debris control and prevention
277 program is necessary to protect the beauty and the environment
278 of Florida. The Legislature also recognizes that a comprehensive
279 illegal dumping, litter, and marine debris control and
280 prevention program will have a positive effect on the state's
281 economy. The Legislature finds that the state's rapid population
282 growth, the ever-increasing mobility of its population, and the
283 large number of tourists contribute to the need for a
284 comprehensive illegal dumping, litter, and marine debris control
285 and prevention program. The Legislature further finds that the
286 program must be coordinated and capable of having statewide
287 identity and grassroots community support.
288 (2) The comprehensive illegal dumping, litter, and marine
289 debris control and prevention program at a minimum must include
290 the following:
291 (a) A local ~~statewide~~ public awareness and educational
292 campaign~~, coordinated by Keep Florida Beautiful, Incorporated,~~
293 to educate individuals, government, businesses, and other
294 organizations concerning the role they must assume in preventing
295 and controlling litter.
296 (b) Enforcement provisions authorized under s. 403.413.
297 (c) Enforcement officers whose responsibilities include
298 grassroots education along with enforcing litter and illegal
299 dumping violations.

300 (d) Local illegal dumping, litter, and marine debris
301 control and prevention programs operated at the county level
302 with emphasis placed on grassroots educational programs designed
303 to prevent and remove litter and marine debris.
304 (e) A statewide adopt-a-highway program as authorized
305 under s. 403.4131.
306 (f) The highway beautification program authorized under s.
307 339.2405.
308 (g) A statewide Adopt-a-Shore program that includes beach,
309 river, and lake shorelines and emphasizes litter and marine
310 debris cleanup and prevention.
311 (h) The prohibition of balloon releases as authorized
312 under s. 372.995.
313 (i) The placement of approved identifiable litter and
314 recycling receptacles.
315 (j) Other educational programs that are implemented at the
316 grassroots level ~~coordinated through Keep Florida Beautiful,~~
317 ~~Inc.,~~ involving volunteers and community programs that clean up
318 and prevent litter, including Youth Conservation Corps
319 activities.
320 Section 4. Section 403.4133, Florida Statutes, is amended
321 to read:
322 403.4133 Adopt-a-Shore Program.--
323 (1) The Legislature finds that litter and illegal dumping
324 present a threat to the state's wildlife, environment, and
325 shorelines. The Legislature further finds that public awareness
326 and education will assist in preventing litter from being
327 illegally deposited along the state's shorelines.

328 (2) The Adopt-a-Shore Program shall be created within the
329 Department of Environmental Protection ~~nonprofit organization~~
330 ~~referred to in s. 403.4131(1), named Keep Florida Beautiful,~~
331 ~~Incorporated~~. The program shall be designed to educate the
332 state's citizens and visitors about the importance of litter
333 prevention and shall include approaches and techniques to remove
334 litter from the state's shorelines.
335 (3) For the purposes of this section, the term "shoreline"
336 includes, but is not limited to, beaches, rivershores, and
337 lakeshores.
338 Section 5. Subsection (28) of section 320.08058, Florida
339 Statutes, is amended to read:
340 320.08058 Specialty license plates.--
341 (28) FLORIDA WILDFLOWER LICENSE PLATES.--
342 (a) The department shall develop a Florida Wildflower
343 license plate as provided in this section. The word "Florida"
344 must appear at the top of the plate, and the words "State
345 Wildflower" and "coreopsis" must appear at the bottom of the
346 plate.
347 (b) The annual use fees shall be distributed to the
348 Department of Agriculture and Consumer Services, to be used for
349 the purposes set forth in ~~Wildflower Account established by Keep~~
350 ~~Florida Beautiful, Inc., created by~~ s. 403.4131. The proceeds
351 must be used to establish native Florida wildflower research
352 programs, wildflower educational programs, and wildflower grant
353 programs to municipal, county, and community-based groups in
354 this state. A maximum of 10 percent of the proceeds from the
355 sale of such plates may be used for administrative costs.

356 Section 6. All unexpended proceeds of fees paid for
357 Wildflower license plates which are held by Keep Florida
358 Beautiful, Inc., must be transferred to the Department of
359 Agriculture and Consumer Services promptly after the effective
360 date of this act.
361 Section 7. Section 403.703, Florida Statutes, is amended
362 to read:
363 (Substantial rewording of section. See
364 s. 403.703, F.S., for present text.)
365 403.703 Definitions.--As used in this part, the term:
366 (1) "Ash residue" has the same meaning as in the
367 department rule governing solid waste combustors which defines
368 the term.
369 (2) "Biological waste" means solid waste that causes or
370 has the capability of causing disease or infection and includes,
371 but is not limited to, biomedical waste, diseased or dead
372 animals, and other wastes capable of transmitting pathogens to
373 humans or animals. The term does not include human remains that
374 are disposed of by persons licensed under chapter 497.
375 (3) "Biomedical waste" means any solid waste or liquid
376 waste that may present a threat of infection to humans. The term
377 includes, but is not limited to, nonliquid human tissue and body
378 parts; laboratory and veterinary waste that contains human-
379 disease-causing agents; discarded disposable sharps; human blood
380 and human blood products and body fluids; and other materials
381 that in the opinion of the Department of Health represent a
382 significant risk of infection to persons outside the generating

383 facility. The term does not include human remains that are
384 disposed of by persons licensed under chapter 497.
385 (4) "Clean debris" means any solid waste that is virtually
386 inert, that is not a pollution threat to groundwater or surface
387 waters, that is not a fire hazard, and that is likely to retain
388 its physical and chemical structure under expected conditions of
389 disposal or use. The term includes uncontaminated concrete,
390 including embedded pipe or steel, brick, glass, ceramics, and
391 other wastes designated by the department.
392 (5) "Closure" means the cessation of operation of a solid
393 waste management facility and the act of securing such facility
394 so that it will pose no significant threat to human health or
395 the environment and includes long-term monitoring and
396 maintenance of a facility if required by department rule.
397 (6) "Construction and demolition debris" means discarded
398 materials generally considered to be not water-soluble and
399 nonhazardous in nature, including, but not limited to, steel,
400 glass, brick, concrete, asphalt roofing material, pipe, gypsum
401 wallboard, and lumber, from the construction or destruction of a
402 structure as part of a construction or demolition project or
403 from the renovation of a structure, and includes rocks, soils,
404 tree remains, trees, and other vegetative matter that normally
405 results from land clearing or land-development operations for a
406 construction project, including such debris from construction of
407 structures at a site remote from the construction or demolition
408 project site. Mixing of construction and demolition debris with
409 other types of solid waste will cause the resulting mixture to

410 be classified as other than construction and demolition debris.
411 The term also includes:
412 (a) Clean cardboard, paper, plastic, wood, and metal
413 scraps from a construction project.
414 (b) Except as provided in s. 403.707(9)(j), yard trash and
415 unpainted, nontreated wood scraps from sources other than
416 construction or demolition projects.
417 (c) Scrap from manufacturing facilities which is the type
418 of material generally used in construction projects and which
419 would meet the definition of construction and demolition debris
420 if it were generated as part of a construction or demolition
421 project. This includes debris from the construction of
422 manufactured homes and scrap shingles, wallboard, siding
423 concrete, and similar materials from industrial or commercial
424 facilities.
425 (d) De minimis amounts of other nonhazardous wastes that
426 are generated at construction or destruction projects, provided
427 such amounts are consistent with best management practices of
428 the industry.
429 (7) "County," or any like term, means a political
430 subdivision of the state established pursuant to s. 1, Art. VIII
431 of the State Constitution and, when s. 403.706(19) applies,
432 means a special district or other entity.
433 (8) "Department" means the Department of Environmental
434 Protection or any successor agency performing a like function.
435 (9) "Disposal" means the discharge, deposit, injection,
436 dumping, spilling, leaking, or placing of any solid waste or
437 hazardous waste into or upon any land or water so that such

438 solid waste or hazardous waste or any constituent thereof may
439 enter other lands or be emitted into the air or discharged into
440 any waters, including groundwaters, or otherwise enter the
441 environment.
442 (10) "Generation" means the act or process of producing
443 solid or hazardous waste.
444 (11) "Guarantor" means any person, other than the owner or
445 operator, who provides evidence of financial responsibility for
446 an owner or operator under this part.
447 (12) "Hazardous substance" means any substance that is
448 defined as a hazardous substance in the United States
449 Comprehensive Environmental Response, Compensation, and
450 Liability Act of 1980, 94 Stat. 2767.
451 (13) "Hazardous waste" means solid waste, or a combination
452 of solid wastes, which, because of its quantity, concentration,
453 or physical, chemical, or infectious characteristics, may cause,
454 or significantly contribute to, an increase in mortality or an
455 increase in serious irreversible or incapacitating reversible
456 illness or may pose a substantial present or potential hazard to
457 human health or the environment when improperly transported,
458 disposed of, stored, treated, or otherwise managed. The term
459 does not include human remains that are disposed of by persons
460 licensed under chapter 497.
461 (14) "Hazardous waste facility" means any building, site,
462 structure, or equipment at or by which hazardous waste is
463 disposed of, stored, or treated.
464 (15) "Hazardous waste management" means the systematic
465 control of the collection, source separation, storage,

466 transportation, processing, treatment, recovery, recycling, and
467 disposal of hazardous wastes.
468 (16) "Land disposal" means any placement of hazardous
469 waste in or on the land and includes, but is not limited to,
470 placement in a landfill, surface impoundment, waste pile,
471 injection well, land treatment facility, salt bed formation,
472 salt dome formation, or underground mine or cave, or placement
473 in a concrete vault or bunker intended for disposal purposes.
474 (17) "Landfill" means any solid waste land disposal area
475 for which a permit, other than a general permit, is required by
476 s. 403.707 and which receives solid waste for disposal in or
477 upon land. The term does not include a landspreading site, an
478 injection well, a surface impoundment, or a facility for the
479 disposal of construction and demolition debris.
480 (18) "Manifest" means the recordkeeping system used for
481 identifying the concentration, quantity, composition, origin,
482 routing, and destination of hazardous waste during its
483 transportation from the point of generation to the point of
484 disposal, storage, or treatment.
485 (19) "Materials recovery facility" means a solid waste
486 management facility that provides for the extraction from solid
487 waste of recyclable materials, materials suitable for use as a
488 fuel or soil amendment, or any combination of such materials.
489 (20) "Municipality," or any like term, means a
490 municipality created pursuant to general or special law
491 authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of
492 the State Constitution and, when s. 403.706(19) applies, means a
493 special district or other entity.

494 (21) "Operation," with respect to any solid waste
495 management facility, means the disposal, storage, or processing
496 of solid waste at and by the facility.
497 (22) "Person" means any and all persons, natural or
498 artificial, including any individual, firm, or association; any
499 municipal or private corporation organized or existing under the
500 laws of this state or any other state; any county of this state;
501 and any governmental agency of this state or the Federal
502 Government.
503 (23) "Processing" means any technique designed to change
504 the physical, chemical, or biological character or composition
505 of any solid waste so as to render it safe for transport;
506 amenable to recovery, storage, or recycling; safe for disposal;
507 or reduced in volume or concentration.
508 (24) "Recovered materials" means metal, paper, glass,
509 plastic, textile, or rubber materials that have known recycling
510 potential, can be feasibly recycled, and have been diverted and
511 source separated or have been removed from the solid waste
512 stream for sale, use, or reuse as raw materials, whether or not
513 the materials require subsequent processing or separation from
514 each other, but the term does not include materials destined for
515 any use that constitutes disposal. Recovered materials as
516 described in this subsection are not solid waste.
517 (25) "Recovered materials processing facility" means a
518 facility engaged solely in the storage, processing, resale, or
519 reuse of recovered materials. Such a facility is not a solid
520 waste management facility if it meets the conditions of s.
521 403.7045(1)(e).

522 (26) "Recyclable material" means those materials that are
523 capable of being recycled and that would otherwise be processed
524 or disposed of as solid waste.
525 (27) "Recycling" means any process by which solid waste,
526 or materials that would otherwise become solid waste, are
527 collected, separated, or processed and reused or returned to use
528 in the form of raw materials or products.
529 (28) "Resource recovery" means the process of recovering
530 materials or energy from solid waste, excluding those materials
531 or solid waste under the control of the Nuclear Regulatory
532 Commission.
533 (29) "Resource recovery equipment" means equipment or
534 machinery exclusively and integrally used in the actual process
535 of recovering material or energy resources from solid waste.
536 (30) "Sludge" includes the accumulated solids, residues,
537 and precipitates generated as a result of waste treatment or
538 processing, including wastewater treatment, water-supply
539 treatment, or operation of an air pollution control facility,
540 and mixed liquids and solids pumped from septic tanks, grease
541 traps, privies, or similar waste disposal appurtenances.
542 (31) "Solid waste" means sludge unregulated under the
543 federal Clean Water Act or Clean Air Act, sludge from a waste
544 treatment works, water supply treatment plant, or air pollution
545 control facility, or garbage, rubbish, refuse, special waste, or
546 other discarded material, including solid, liquid, semisolid, or
547 contained gaseous material resulting from domestic, industrial,
548 commercial, mining, agricultural, or governmental operations.

549 Recovered materials as defined in subsection (24) are not solid
550 waste.
551 (32) "Solid waste disposal facility" means any solid waste
552 management facility that is the final resting place for solid
553 waste, including landfills and incineration facilities that
554 produce ash from the process of incinerating municipal solid
555 waste.
556 (33) "Solid waste management" means the process by which
557 solid waste is collected, transported, stored, separated,
558 processed, or disposed of in any other way according to an
559 orderly, purposeful, and planned program, which includes
560 closure.
561 (34) "Solid waste management facility" means any solid
562 waste disposal area, volume-reduction plant, transfer station,
563 materials recovery facility, or other facility, the purpose of
564 which is resource recovery or the disposal, recycling,
565 processing, or storage of solid waste. The term does not include
566 recovered materials processing facilities that meet the
567 requirements of s. 403.7046, except the portion of such
568 facilities, if any, which is used for the management of solid
569 waste.
570 (35) "Source separated" means that the recovered materials
571 are separated from solid waste at the location where the
572 recovered materials and solid waste are generated. The term does
573 not require that various types of recovered materials be
574 separated from each other, and recognizes de minimis solid
575 waste, in accordance with industry standards and practices, may
576 be included in the recovered materials. Materials are not

577 considered source-separated when two or more types of recovered
578 materials are deposited in combination with each other in a
579 commercial collection container located where the materials are
580 generated and when such materials contain more than 10 percent
581 solid waste by volume or weight. For purposes of this
582 subsection, the term "various types of recovered materials"
583 means metals, paper, glass, plastic, textiles, and rubber.
584 (36) "Special wastes" means solid wastes that can require
585 special handling and management, including, but not limited to,
586 white goods, waste tires, used oil, lead-acid batteries,
587 construction and demolition debris, ash residue, yard trash, and
588 biological wastes.
589 (37) "Storage" means the containment or holding of a
590 hazardous waste, either on a temporary basis or for a period of
591 years, in such a manner as not to constitute disposal of such
592 hazardous waste.
593 (38) "Transfer station" means a site the primary purpose
594 of which is to store or hold solid waste for transport to a
595 processing or disposal facility.
596 (39) "Transport" means the movement of hazardous waste
597 from the point of generation or point of entry into the state to
598 any offsite intermediate points and to the point of offsite
599 ultimate disposal, storage, treatment, or exit from the state.
600 (40) "Treatment," when used in connection with hazardous
601 waste, means any method, technique, or process, including
602 neutralization, which is designed to change the physical,
603 chemical, or biological character or composition of any
604 hazardous waste so as to neutralize it or render it

605 nonhazardous, safe for transport, amenable to recovery, amenable
606 to storage or disposal, or reduced in volume or concentration.
607 The term includes any activity or processing that is designed to
608 change the physical form or chemical composition of hazardous
609 waste so as to render it nonhazardous.
610 (41) "Volume reduction plant" includes incinerators,
611 pulverizers, compactors, shredding and baling plants, composting
612 plants, and other plants that accept and process solid waste for
613 recycling or disposal.
614 (42) "White goods" includes inoperative and discarded
615 refrigerators, ranges, water heaters, freezers, and other
616 similar domestic and commercial large appliances.
617 (43) "Yard trash" means vegetative matter resulting from
618 landscaping maintenance and land clearing operations and
619 includes associated rocks and soils.
620 Section 8. Subsection (69) of section 316.003, Florida
621 Statutes, is amended to read:
622 316.003 Definitions.--The following words and phrases,
623 when used in this chapter, shall have the meanings respectively
624 ascribed to them in this section, except where the context
625 otherwise requires:
626 (69) HAZARDOUS MATERIAL.--Any substance or material which
627 has been determined by the secretary of the United States
628 Department of Transportation to be capable of imposing an
629 unreasonable risk to health, safety, and property. This term
630 includes hazardous waste as defined in s. 403.703(13) ~~s.~~
631 ~~403.703(21)~~.

632 Section 9. Paragraph (f) of subsection (2) of section
633 377.709, Florida Statutes, is amended to read:
634 377.709 Funding by electric utilities of local
635 governmental solid waste facilities that generate electricity.--
636 (2) DEFINITIONS.--As used in this section, the term:
637 (f) "Solid waste facility" means a facility owned or
638 operated by, or on behalf of, a local government for the purpose
639 of disposing of solid waste, as that term is defined in s.
640 403.703(31) ~~s. 403.703(13)~~, by any process that produces heat
641 and incorporates, as a part of the facility, the means of
642 converting heat to electrical energy in amounts greater than
643 actually required for the operation of the facility.
644 Section 10. Subsection (1) of section 487.048, Florida
645 Statutes, is amended to read:
646 487.048 Dealer's license; records.--
647 (1) Each person holding or offering for sale, selling, or
648 distributing restricted-use pesticides shall obtain a dealer's
649 license from the department. Application for the license shall
650 be made on a form prescribed by the department. The license must
651 be obtained before entering into business or transferring
652 ownership of a business. The department may require examination
653 or other proof of competency of individuals to whom licenses are
654 issued or of individuals employed by persons to whom licenses
655 are issued. Demonstration of continued competency may be
656 required for license renewal, as set by rule. The license shall
657 be renewed annually as provided by rule. An annual license fee
658 not exceeding $250 shall be established by rule. However, a user
659 of a restricted-use pesticide may distribute unopened containers

660 of a properly labeled pesticide to another user who is legally
661 entitled to use that restricted-use pesticide without obtaining
662 a pesticide dealer's license. The exclusive purpose of
663 distribution of the restricted-use pesticide is to keep it from
664 becoming a hazardous waste as defined in s. 403.703(13) ~~s.~~
665 ~~403.703(21)~~.
666 Section 11. Section 403.704, Florida Statutes, is amended
667 to read:
668 403.704 Powers and duties of the department.--The
669 department shall have responsibility for the implementation and
670 enforcement of the provisions of this act. In addition to other
671 powers and duties, the department shall:
672 (1) Develop and implement, in consultation with local
673 governments, a state solid waste management program, as defined
674 in s. 403.705~~, and update the program at least every 3 years~~. ~~In~~
675 ~~developing rules to implement the state solid waste management~~
676 ~~program, the department shall hold public hearings around the~~
677 ~~state and shall give notice of such public hearings to all local~~
678 ~~governments and regional planning agencies.~~
679 (2) Provide technical assistance to counties,
680 municipalities, and other persons, and cooperate with
681 appropriate federal agencies and private organizations in
682 carrying out the provisions of this act.
683 (3) Promote the planning and application of recycling and
684 resource recovery systems which preserve and enhance the quality
685 of the air, water, and other natural resources of the state and
686 assist in and encourage, where appropriate, the development of
687 regional solid waste management facilities.

688 (4) Serve as the official state representative for all
689 purposes of the federal Solid Waste Disposal Act, as amended by
690 Pub. L. No. 91-512, or as subsequently amended.
691 (5) Use private industry or the State University System
692 through contractual arrangements for implementation of some or
693 all of the requirements of the state solid waste management
694 program and for such other activities as may be considered
695 necessary, desirable, or convenient.
696 (6) Encourage recycling and resource recovery as a source
697 of energy and materials.
698 (7) Assist in and encourage, as much as possible, the
699 development within the state of industries and commercial
700 enterprises which are based upon resource recovery, recycling,
701 and reuse of solid waste.
702 ~~(8) Charge reasonable fees for any services it performs~~
703 ~~pursuant to this act, provided user fees shall apply uniformly~~
704 ~~within each municipality or county to all users who are provided~~
705 ~~with solid waste management services.~~
706 ~~(9) Acquire, at its discretion, personal or real property~~
707 ~~or any interest therein by gift, lease, or purchase for the~~
708 ~~purpose of providing sites for solid waste management~~
709 ~~facilities.~~
710 ~~(10) Acquire, construct, reconstruct, improve, maintain,~~
711 ~~equip, furnish, and operate, at its discretion, such solid waste~~
712 ~~management facilities as are called for by the state solid waste~~
713 ~~management program.~~
714 ~~(11) Receive funds or revenues from the sale of products,~~
715 ~~materials, fuels, or energy in any form derived from processing~~

716 ~~of solid waste by state-owned or state-operated facilities,~~
717 ~~which funds or revenues shall be deposited into the Solid Waste~~
718 ~~Management Trust Fund.~~
719 (8) ~~(12)~~ Determine by rule the facilities, equipment,
720 personnel, and number of monitoring wells to be provided at each
721 ~~Class I~~ solid waste disposal area.
722 ~~(13) Encourage, but not require, as part of a Class II~~
723 ~~solid waste disposal area, a potable water supply; an employee~~
724 ~~shelter; handwashing and toilet facilities; equipment washout~~
725 ~~facilities; electric service for operations and repairs;~~
726 ~~equipment shelter for maintenance and storage of parts,~~
727 ~~equipment, and tools; scales for weighing solid waste received~~
728 ~~at the disposal area; a trained equipment operator in full-time~~
729 ~~attendance during operating hours; and communication facilities~~
730 ~~for use in emergencies. The department may require an attendant~~
731 ~~at a Class II solid waste disposal area during the hours of~~
732 ~~operation if the department affirmatively demonstrates that such~~
733 ~~a requirement is necessary to prevent unlawful fires,~~
734 ~~unauthorized dumping, or littering of nearby property.~~
735 ~~(14) Require a Class II solid waste disposal area to have~~
736 ~~at least one monitoring well which shall be placed adjacent to~~
737 ~~the site in the direction of groundwater flow unless otherwise~~
738 ~~exempted by the department. The department may require~~
739 ~~additional monitoring wells not farther than 1 mile from the~~
740 ~~site if it is affirmatively demonstrated by the department that~~
741 ~~a significant change in the initial quality of the water has~~
742 ~~occurred in the downstream monitoring well which adversely~~
743 ~~affects the beneficial uses of the water. These wells may be~~

744 ~~public or private water supply wells if they are suitable for~~
745 ~~use in determining background water quality levels.~~
746 (9) ~~(15)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54
747 to implement and enforce the provisions of this act, including
748 requirements for the classification, construction, operation,
749 maintenance, and closure of solid waste management facilities
750 and requirements for, and conditions on, solid waste disposal in
751 this state, whether such solid waste is generated within this
752 state or outside this state as long as such requirements and
753 conditions are not based on the out-of-state origin of the waste
754 and are consistent with applicable provisions of law. When
755 classifying solid waste management facilities, the department
756 shall consider the hydrogeology of the site for the facility,
757 the types of wastes to be handled by the facility, and methods
758 used to control the types of waste to be handled by the facility
759 and shall seek to minimize the adverse effects of solid waste
760 management on the environment. Whenever the department adopts
761 any rule stricter or more stringent than one which has been set
762 by the United States Environmental Protection Agency, the
763 procedures set forth in s. 403.804(2) shall be followed. The
764 department shall not, however, adopt hazardous waste rules for
765 solid waste for which special studies were required prior to
766 October 1, 1988, under s. 8002 of the Resource Conservation and
767 Recovery Act, 42 U.S.C. s. 6982, as amended, until the studies
768 are completed by the United States Environmental Protection
769 Agency and the information is available to the department for
770 consideration in adopting its own rule.

771 (10) ~~(16)~~ Issue or modify permits on such conditions as are
772 necessary to effect the intent and purposes of this act, and may
773 deny or revoke permits.
774 ~~(17) Conduct research, using the State University System,~~
775 ~~solid waste professionals from local governments, private~~
776 ~~enterprise, and other organizations, on alternative,~~
777 ~~economically feasible, cost-effective, and environmentally safe~~
778 ~~solid waste management and landfill closure methods which~~
779 ~~protect the health, safety, and welfare of the public and the~~
780 ~~environment and which may assist in developing markets and~~
781 ~~provide economic benefits to local governments, the state, and~~
782 ~~its citizens, and solicit public participation during the~~
783 ~~research process. The department shall incorporate such cost-~~
784 ~~effective landfill closure methods in the appropriate department~~
785 ~~rule as alternative closure requirements.~~
786 (11) ~~(18)~~ Develop and implement or contract for services to
787 develop information on recovered materials markets and
788 strategies for market development and expansion for use of these
789 materials. Additionally, the department shall maintain a
790 directory of recycling businesses operating in the state and
791 shall serve as a coordinator to match recovered materials with
792 markets. Such directory shall be made available to the public
793 and to local governments to assist with their solid waste
794 management activities.
795 ~~(19) Authorize variances from solid waste closure rules~~
796 ~~adopted pursuant to this part, provided such variances are~~
797 ~~applied for and approved in accordance with s. 403.201 and will~~

798 ~~not result in significant threats to human health or the~~
799 ~~environment.~~
800 (12) ~~(20)~~ Establish accounts and deposit to the Solid Waste
801 Management Trust Fund and control and administer moneys it may
802 withdraw from the fund.
803 (13) ~~(21)~~ Manage a program of grants, using funds from the
804 Solid Waste Management Trust Fund and funds provided by the
805 Legislature for solid waste management, for programs for
806 recycling, composting, litter control, and special waste
807 management and for programs which provide for the safe and
808 proper management of solid waste.
809 (14) ~~(22)~~ Budget and receive appropriated funds and accept,
810 receive, and administer grants or other funds or gifts from
811 public or private agencies, including the state and the Federal
812 Government, for the purpose of carrying out the provisions of
813 this act.
814 (15) ~~(23)~~ Delegate its powers, enter into contracts, or
815 take such other actions as may be necessary to implement this
816 act.
817 (16) ~~(24)~~ Receive and administer funds appropriated for
818 county hazardous waste management assessments.
819 (17) ~~(25)~~ Provide technical assistance to local governments
820 and regional agencies to ensure consistency between county
821 hazardous waste management assessments; coordinate the
822 development of such assessments with the assistance of the
823 appropriate regional planning councils; and review and make
824 recommendations to the Legislature relative to the sufficiency

825 of the assessments to meet state hazardous waste management
826 needs.
827 (18) ~~(26)~~ Increase public education and public awareness of
828 solid and hazardous waste issues by developing and promoting
829 statewide programs of litter control, recycling, volume
830 reduction, and proper methods of solid waste and hazardous waste
831 management.
832 (19) ~~(27)~~ Assist the hazardous waste storage, treatment, or
833 disposal industry by providing to the industry any data produced
834 on the types and quantities of hazardous waste generated.
835 (20) ~~(28)~~ Institute a hazardous waste emergency response
836 program which would include emergency telecommunication
837 capabilities and coordination with appropriate agencies.
838 (21) ~~(29)~~ Promulgate rules necessary to accept delegation
839 of the hazardous waste management program from the Environmental
840 Protection Agency under the Hazardous and Solid Waste Amendments
841 of 1984, Pub. L. No. 98-616.
842 (22) ~~(30)~~ Adopt rules, if necessary, to address the
843 incineration and disposal of biomedical waste and the management
844 of biological waste within the state, whether such waste is
845 generated within this state or outside this state, as long as
846 such requirements and conditions are not based on the out-of-
847 state origin of the waste and are consistent with applicable
848 provisions of law.
849 Section 12. Section 403.7043, Florida Statutes, is amended
850 to read:
851 403.7043 Compost standards and applications.--

852 (1) In order to protect the state's land and water
853 resources, compost produced, utilized, or disposed of by the
854 composting process at solid waste management facilities in the
855 state must meet criteria established by the department.
856 (2) The department shall ~~Within 6 months after October 1,~~
857 ~~1988, the department shall initiate rulemaking to~~ establish and
858 maintain rules addressing standards for the production of
859 compost ~~and shall complete and promulgate those rules within 12~~
860 ~~months after initiating the process of rulemaking~~, including
861 rules establishing:
862 (a) Requirements necessary to produce hygienically safe
863 compost products for varying applications.
864 (b) A classification scheme for compost based on~~:~~ the
865 types of waste composted, ~~including at least one type containing~~
866 ~~only yard trash;~~ the maturity of the compost, ~~including at least~~
867 ~~three degrees of decomposition for fresh, semimature, and~~
868 ~~mature;~~ and the levels of organic and inorganic constituents in
869 the compost. This scheme shall address:
870 1. Methods for measurement of the compost maturity.
871 2. Particle sizes.
872 3. Moisture content.
873 4. Average levels of organic and inorganic constituents,
874 including heavy metals, for such classes of compost as the
875 department establishes, and the analytical methods to determine
876 those levels.
877 ~~(3) Within 6 months after October 1, 1988, the department~~
878 ~~shall initiate rulemaking to prescribe the allowable uses and~~
879 ~~application rates of compost and shall complete and promulgate~~

880 ~~those rules within 12 months after initiating the process of~~
881 ~~rulemaking, based on the following criteria:~~
882 ~~(a) The total quantity of organic and inorganic~~
883 ~~constituents, including heavy metals, allowed to be applied~~
884 ~~through the addition of compost to the soil per acre per year.~~
885 ~~(b) The allowable uses of compost based on maturity and~~
886 ~~type of compost.~~
887 ~~(4) If compost is produced which does not meet the~~
888 ~~criteria prescribed by the department for agricultural and other~~
889 ~~use, the compost must be reprocessed or disposed of in a manner~~
890 ~~approved by the department, unless a different application is~~
891 ~~specifically permitted by the department.~~
892 ~~(5) The provisions of s. 403.706 shall not prohibit any~~
893 ~~county or municipality which has in place a memorandum of~~
894 ~~understanding or other written agreement as of October 1, 1988,~~
895 ~~from proceeding with plans to build a compost facility.~~
896 Section 13. Subsections (1), (2), and (3) of section
897 403.7045, Florida Statutes, are amended to read:
898 403.7045 Application of act and integration with other
899 acts.--
900 (1) The following wastes or activities shall not be
901 regulated pursuant to this act:
902 (a) Byproduct material, source material, and special
903 nuclear material, the generation, transportation, disposal,
904 storage, or treatment of which is regulated under chapter 404 or
905 under the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat.
906 923, as amended;

907 (b) Suspended solids and dissolved materials in domestic
908 sewage effluent or irrigation return flows or other discharges
909 which are point sources subject to permits pursuant to
910 provisions of this chapter or pursuant to s. 402 of the Clean
911 Water Act, Pub. L. No. 95-217;
912 (c) Emissions to the air from a stationary installation or
913 source regulated under provisions of this chapter or under the
914 Clean Air Act, Pub. L. No. 95-95;
915 (d) Drilling fluids, produced waters, and other wastes
916 associated with the exploration for, or development and
917 production of, crude oil or natural gas which are regulated
918 under chapter 377; or
919 (e) Recovered materials or recovered materials processing
920 facilities shall not be regulated pursuant to this act, except
921 as provided in s. 403.7046, if:
922 1. A majority of the recovered materials at the facility
923 are demonstrated to be sold, used, or reused within 1 year.
924 2. The recovered materials handled by the facility or the
925 products or byproducts of operations that process recovered
926 materials are not discharged, deposited, injected, dumped,
927 spilled, leaked, or placed into or upon any land or water by the
928 owner or operator of such facility so that such recovered
929 materials, products or byproducts, or any constituent thereof
930 may enter other lands or be emitted into the air or discharged
931 into any waters, including groundwaters, or otherwise enter the
932 environment such that a threat of contamination in excess of
933 applicable department standards and criteria is caused.

934 3. The recovered materials handled by the facility are not
935 hazardous wastes as defined under s. 403.703, and rules
936 promulgated pursuant thereto.
937 4. The facility is registered as required in s. 403.7046.
938 (f) Industrial byproducts, if:
939 1. A majority of the industrial byproducts are
940 demonstrated to be sold, used, or reused within 1 year.
941 2. The industrial byproducts are not discharged,
942 deposited, injected, dumped, spilled, leaked, or placed upon any
943 land or water so that such industrial byproducts, or any
944 constituent thereof, may enter other lands or be emitted into
945 the air or discharged into any waters, including groundwaters,
946 or otherwise enter the environment such that a threat of
947 contamination in excess of applicable department standards and
948 criteria or a significant threat to public health is caused.
949 3. The industrial byproducts are not hazardous wastes as
950 defined under s. 403.703 and rules adopted under this section.
951 (2) Except as provided in s. 403.704(9) ~~s. 403.704(15)~~,
952 the following wastes shall not be regulated as a hazardous waste
953 pursuant to this act, except when determined by the United
954 States Environmental Protection Agency to be a hazardous waste:
955 (a) Ashes and scrubber sludges generated from the burning
956 of boiler fuel for generation of electricity or steam.
957 (b) Agricultural and silvicultural byproduct material and
958 agricultural and silvicultural process waste from normal farming
959 or processing.
960 (c) Discarded material generated by the mining and
961 beneficiation and chemical or thermal processing of phosphate

962 rock, and precipitates resulting from neutralization of
963 phosphate chemical plant process and nonprocess waters.
964 (3) The following wastes or activities shall be regulated
965 pursuant to this act in the following manner:
966 (a) Dredged material that is generated as part of a
967 project permitted under part IV of chapter 373 or chapter 161,
968 or that is authorized to be removed from sovereign submerged
969 lands under chapter 253, ~~Dredge spoil or fill material~~ shall be
970 managed in accordance with the conditions of that permit or
971 authorization unless the dredged material is regulated as
972 hazardous waste pursuant to this part ~~disposed of pursuant to a~~
973 ~~dredge and fill permit, but whenever hazardous components are~~
974 ~~disposed of within the dredge or fill material, the dredge and~~
975 ~~fill permits shall specify the specific hazardous wastes~~
976 ~~contained and the concentration of each such waste~~. If the
977 dredged material contains hazardous substances, the department
978 may further ~~then~~ limit or restrict the sale or use of the
979 dredged ~~dredge and fill~~ material and may specify such other
980 conditions relative to this material as are reasonably necessary
981 to protect the public from the potential hazards.
982 (b) Hazardous wastes that ~~which~~ are contained in
983 artificial recharge waters or other waters intentionally
984 introduced into any underground formation and that ~~which~~ are
985 permitted pursuant to s. 373.106 shall also be handled in
986 compliance with the requirements and standards for disposal,
987 storage, and treatment of hazardous waste under this act.
988 (c) Solid waste or hazardous waste facilities that ~~which~~
989 are operated as a part of the normal operation of a power

990 generating facility and which are licensed by certification
991 pursuant to the Florida Electrical Power Plant Siting Act, ss.
992 403.501-403.518, shall undergo such certification subject to the
993 substantive provisions of this act.
994 (d) Biomedical waste and biological waste shall be
995 disposed of only as authorized by the department. However, any
996 person who unknowingly disposes into a sanitary landfill or
997 waste-to-energy facility any such waste that ~~which~~ has not been
998 properly segregated or separated from other solid wastes by the
999 generating facility is not guilty of a violation under this act.
1000 ~~Nothing in~~ This paragraph does not ~~shall be construed to~~
1001 prohibit the department from seeking injunctive relief pursuant
1002 to s. 403.131 to prohibit the unauthorized disposal of
1003 biomedical waste or biological waste.
1004 Section 14. Section 403.707, Florida Statutes, is amended
1005 to read:
1006 403.707 Permits.--
1007 (1) A ~~No~~ solid waste management facility may not be
1008 operated, maintained, constructed, expanded, modified, or closed
1009 without an appropriate and currently valid permit issued by the
1010 department. The department may, by rule, exempt specified types
1011 of facilities from the requirement for a permit if it determines
1012 that construction for operation of the facility is not expected
1013 to create any significant threat to the environment or public
1014 health. For purposes of this part, and only when specified by
1015 department rule, a permit may include registrations as well as
1016 other forms of licenses as defined in s. 120.52. Solid waste
1017 construction permits issued under this section may include any

1018 permit conditions necessary to achieve compliance with the
1019 recycling requirements of this act. The department shall pursue
1020 reasonable timeframes for closure and construction requirements,
1021 considering pending federal requirements and implementation
1022 costs to the permittee. The department shall adopt a rule
1023 establishing performance standards for construction and closure
1024 of solid waste management facilities. The standards shall allow
1025 flexibility in design and consideration for site-specific
1026 characteristics.
1027 (2) Except as provided in s. 403.722(6), no permit under
1028 this section is required for the following, provided that the
1029 activity shall not create a public nuisance or any condition
1030 adversely affecting the environment or public health and shall
1031 not violate other state or local laws, ordinances, rules,
1032 regulations, or orders:
1033 (a) Disposal by persons of solid waste resulting from
1034 their own activities on their own property, provided such waste
1035 is either ordinary household waste from their residential
1036 property or is rocks, soils, trees, tree remains, and other
1037 vegetative matter that ~~which~~ normally result from land
1038 development operations. Disposal of materials that ~~which~~ could
1039 create a public nuisance or adversely affect the environment or
1040 public health, such as: white goods; automotive materials, such
1041 as batteries and tires; petroleum products; pesticides;
1042 solvents; or hazardous substances, is not covered under this
1043 exemption.
1044 (b) Storage in containers by persons of solid waste
1045 resulting from their own activities on their property, leased or

1046 rented property, or property subject to a homeowners or
1047 maintenance association for which the person contributes
1048 association assessments, if the solid waste in such containers
1049 is collected at least once a week.
1050 (c) Disposal by persons of solid waste resulting from
1051 their own activities on their property, provided the
1052 environmental effects of such disposal on groundwater and
1053 surface waters are:
1054 1. Addressed or authorized by a site certification order
1055 issued under part II or a permit issued by the department
1056 pursuant to this chapter or rules adopted pursuant thereto; or
1057 2. Addressed or authorized by, or exempted from the
1058 requirement to obtain, a groundwater monitoring plan approved by
1059 the department.
1060 (d) Disposal by persons of solid waste resulting from
1061 their own activities on their own property, provided that such
1062 disposal occurred prior to October 1, 1988.
1063 (e) Disposal of solid waste resulting from normal farming
1064 operations as defined by department rule. Polyethylene
1065 agricultural plastic, damaged, nonsalvageable, untreated wood
1066 pallets, and packing material that cannot be feasibly recycled,
1067 which are used in connection with agricultural operations
1068 related to the growing, harvesting, or maintenance of crops, may
1069 be disposed of by open burning, provided that no public nuisance
1070 or any condition adversely affecting the environment or the
1071 public health is created thereby and that state or federal
1072 ambient air quality standards are not violated.

1073 (f) The use of clean debris as fill material in any area.
1074 However, this paragraph does not exempt any person from
1075 obtaining any other required permits, nor does it affect a
1076 person's responsibility to dispose of clean debris appropriately
1077 if it is not to be used as fill material.
1078 (g) Compost operations that produce less than 50 cubic
1079 yards of compost per year when the compost produced is used on
1080 the property where the compost operation is located.
1081 (3) All applicable provisions of ss. 403.087 and 403.088,
1082 relating to permits, apply to the control of solid waste
1083 management facilities.
1084 (4) When application for a construction permit for a Class
1085 I ~~or Class II~~ solid waste disposal area is made, it is the duty
1086 of the department to provide a copy of the application, within 7
1087 days after filing, to the water management district having
1088 jurisdiction where the area is to be located. The water
1089 management district may prepare an advisory report as to the
1090 impact on water resources. This report shall contain the
1091 district's recommendations as to the disposition of the
1092 application and shall be submitted to the department no later
1093 than 30 days prior to the deadline for final agency action by
1094 the department. However, the failure of the department or the
1095 water management district to comply with the provisions of this
1096 subsection shall not be the basis for the denial, revocation, or
1097 remand of any permit or order issued by the department.
1098 (5) The department may not issue a construction permit
1099 pursuant to this part for a new solid waste landfill within
1100 3,000 feet of Class I surface waters.

1101 (6) The department may issue a construction permit
1102 pursuant to this part only to a solid waste management facility
1103 that provides the conditions necessary to control the safe
1104 movement of wastes or waste constituents into surface or ground
1105 waters or the atmosphere and that will be operated, maintained,
1106 and closed by qualified and properly trained personnel. Such
1107 facility must if necessary:
1108 (a) Use natural or artificial barriers which are capable
1109 of controlling lateral or vertical movement of wastes or waste
1110 constituents into surface or ground waters.
1111 (b) Have a foundation or base that is capable of providing
1112 support for structures and waste deposits and capable of
1113 preventing foundation or base failure due to settlement,
1114 compression, or uplift.
1115 (c) Provide for the most economically feasible, cost-
1116 effective, and environmentally safe control of leachate, gas,
1117 stormwater, and disease vectors and prevent the endangerment of
1118 public health and the environment.
1119
1120 Open fires, air-curtain incinerators, or trench burning may not
1121 be used as a means of disposal at a solid waste management
1122 facility, unless permitted by the department under s. 403.087.
1123 (7) Prior to application for a construction permit, an
1124 applicant shall designate to the department temporary backup
1125 disposal areas or processes for the resource recovery facility.
1126 Failure to designate temporary backup disposal areas or
1127 processes shall result in a denial of the construction permit.

1128 (8) The department may refuse to issue a permit to an
1129 applicant who by past conduct in this state has repeatedly
1130 violated pertinent statutes, rules, or orders or permit terms or
1131 conditions relating to any solid waste management facility and
1132 who is deemed to be irresponsible as defined by department rule.
1133 For the purposes of this subsection, an applicant includes the
1134 owner or operator of the facility, or if the owner or operator
1135 is a business entity, a parent of a subsidiary corporation, a
1136 partner, a corporate officer or director, or a stockholder
1137 holding more than 50 percent of the stock of the corporation.
1138 ~~(9) Before or on the same day of filing with the~~
1139 ~~department of an application for any construction permit for the~~
1140 ~~incineration of biomedical waste which the department may~~
1141 ~~require by rule, the applicant shall notify each city and county~~
1142 ~~within 1 mile of the facility of the filing of the application~~
1143 ~~and shall publish notice of the filing of the application. The~~
1144 ~~applicant shall publish a second notice of the filing within 14~~
1145 ~~days after the date of filing. Each notice shall be published in~~
1146 ~~a newspaper of general circulation in the county in which the~~
1147 ~~facility is located or is proposed to be located.~~
1148 ~~Notwithstanding the provisions of chapter 50, for purposes of~~
1149 ~~this section, a "newspaper of general circulation" shall be the~~
1150 ~~newspaper within the county in which the installation or~~
1151 ~~facility is proposed which has the largest daily circulation in~~
1152 ~~that county and has its principal office in that county. If the~~
1153 ~~newspaper with the largest daily circulation has its principal~~
1154 ~~office outside the county, the notice shall appear in both the~~
1155 ~~newspaper with the largest daily circulation in that county, and~~

1156 ~~a newspaper authorized to publish legal notices in that county.~~
1157 ~~The notice shall contain:~~
1158 ~~(a) The name of the applicant and a brief description of~~
1159 ~~the facility and its location.~~
1160 ~~(b) The location of the application file and when it is~~
1161 ~~available for public inspection.~~
1162
1163 ~~The notice shall be prepared by the applicant and shall comply~~
1164 ~~with the following format:~~
1165
1166 ~~Notice of Application~~
1167
1168 ~~The Department of Environmental Protection announces receipt of~~
1169 ~~an application for a permit from (name of applicant) to (brief~~
1170 ~~description of project). This proposed project will be located~~
1171 ~~at (location) in (county) (city).~~
1172
1173 ~~This application is being processed and is available for public~~
1174 ~~inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,~~
1175 ~~Monday through Friday, except legal holidays, at (name and~~
1176 ~~address of office).~~
1177
1178 ~~(10) A permit, which the department may require by rule,~~
1179 ~~for the incineration of biomedical waste, may not be transferred~~
1180 ~~by the permittee to any other entity, except in conformity with~~
1181 ~~the requirements of this subsection.~~
1182 ~~(a) Within 30 days after the sale or legal transfer of a~~
1183 ~~permitted facility, the permittee shall file with the department~~

1184 ~~an application for transfer of the permits on such form as the~~
1185 ~~department shall establish by rule. The form must be completed~~
1186 ~~with the notarized signatures of both the transferring permittee~~
1187 ~~and the proposed permittee.~~
1188 ~~(b) The department shall approve the transfer of a permit~~
1189 ~~unless it determines that the proposed permittee has not~~
1190 ~~provided reasonable assurances that the proposed permittee has~~
1191 ~~the administrative, technical, and financial capability to~~
1192 ~~properly satisfy the requirements and conditions of the permit,~~
1193 ~~as determined by department rule. The determination shall be~~
1194 ~~limited solely to the ability of the proposed permittee to~~
1195 ~~comply with the conditions of the existing permit, and it shall~~
1196 ~~not concern the adequacy of the permit conditions. If the~~
1197 ~~department proposes to deny the transfer, it shall provide both~~
1198 ~~the transferring permittee and the proposed permittee a written~~
1199 ~~objection to such transfer together with notice of a right to~~
1200 ~~request a proceeding on such determination under chapter 120.~~
1201 ~~(c) Within 90 days after receiving a properly completed~~
1202 ~~application for transfer of a permit, the department shall issue~~
1203 ~~a final determination. The department may toll the time for~~
1204 ~~making a determination on the transfer by notifying both the~~
1205 ~~transferring permittee and the proposed permittee that~~
1206 ~~additional information is required to adequately review the~~
1207 ~~transfer request. Such notification shall be provided within 30~~
1208 ~~days after receipt of an application for transfer of the permit,~~
1209 ~~completed pursuant to paragraph (a). If the department fails to~~
1210 ~~take action to approve or deny the transfer within 90 days after~~
1211 ~~receipt of the completed application or within 90 days after~~

1212 ~~receipt of the last item of timely requested additional~~
1213 ~~information, the transfer shall be deemed approved.~~
1214 ~~(d) The transferring permittee is encouraged to apply for~~
1215 ~~a permit transfer well in advance of the sale or legal transfer~~
1216 ~~of a permitted facility. However, the transfer of the permit~~
1217 ~~shall not be effective prior to the sale or legal transfer of~~
1218 ~~the facility.~~
1219 ~~(e) Until the transfer of the permit is approved by the~~
1220 ~~department, the transferring permittee and any other person~~
1221 ~~constructing, operating, or maintaining the permitted facility~~
1222 ~~shall be liable for compliance with the terms of the permit.~~
1223 ~~Nothing in this section shall relieve the transferring permittee~~
1224 ~~of liability for corrective actions that may be required as a~~
1225 ~~result of any violations occurring prior to the legal transfer~~
1226 ~~of the permit.~~
1227 ~~(11) The department shall review all permit applications~~
1228 ~~for any designated Class I solid waste disposal facility. As~~
1229 ~~used in this subsection, the term "designated Class I solid~~
1230 ~~waste disposal facility" means any facility that is, as of May~~
1231 ~~12, 1993, a solid waste disposal facility classified as an~~
1232 ~~active Class I landfill by the department, that is located in~~
1233 ~~whole or in part within 1,000 feet of the boundary of any~~
1234 ~~municipality, but that is not located within any county with an~~
1235 ~~approved charter or consolidated municipal government, is not~~
1236 ~~located within any municipality, and is not operated by a~~
1237 ~~municipality. The department shall not permit vertical expansion~~
1238 ~~or horizontal expansion of any designated Class I solid waste~~
1239 ~~disposal facility unless the application for such permit was~~

1240 ~~filed before January 1, 1993, and no solid waste management~~
1241 ~~facility may be operated which is a vertical expansion or~~
1242 ~~horizontal expansion of a designated Class I solid waste~~
1243 ~~disposal facility. As used in this subsection, the term~~
1244 ~~"vertical expansion" means any activity that will result in an~~
1245 ~~increase in the height of a designated Class I solid waste~~
1246 ~~disposal facility above 100 feet National Geodetic Vertical~~
1247 ~~Datum, except solely for closure, and the term "horizontal~~
1248 ~~expansion" means any activity that will result in an increase in~~
1249 ~~the ground area covered by a designated Class I solid waste~~
1250 ~~disposal facility, or if within 1 mile of a designated Class I~~
1251 ~~solid waste disposal facility, any new or expanded operation of~~
1252 ~~any solid waste disposal facility or area, or of incineration of~~
1253 ~~solid waste, or of storage of solid waste for more than 1 year,~~
1254 ~~or of composting of solid waste other than yard trash.~~
1255 (9) ~~(12)~~ The department shall establish a separate category
1256 for solid waste management facilities which accept only
1257 construction and demolition debris for disposal or recycling.
1258 The department shall establish a reasonable schedule for
1259 existing facilities to comply with this section to avoid undue
1260 hardship to such facilities. However, a permitted solid waste
1261 disposal unit that ~~which~~ receives a significant amount of waste
1262 prior to the compliance deadline established in this schedule
1263 shall not be required to be retrofitted with liners or leachate
1264 control systems. Facilities accepting materials defined in s.
1265 403.703(6)(b) ~~s. 403.703(17)(b)~~ must implement a groundwater
1266 monitoring system adequate to detect contaminants that may

1267 reasonably be expected to result from such disposal prior to the
1268 acceptance of those materials.
1269 (a) The department shall establish reasonable
1270 construction, operation, monitoring, recordkeeping, financial
1271 assurance, and closure requirements for such facilities. The
1272 department shall take into account the nature of the waste
1273 accepted at various facilities when establishing these
1274 requirements, and may impose less stringent requirements,
1275 including a system of general permits or registration
1276 requirements, for facilities that accept only a segregated waste
1277 stream which is expected to pose a minimal risk to the
1278 environment and public health, such as clean debris. The
1279 Legislature recognizes that incidental amounts of other types of
1280 solid waste are commonly generated at construction or demolition
1281 projects. In any enforcement action taken pursuant to this
1282 section, the department shall consider the difficulty of
1283 removing these incidental amounts from the waste stream.
1284 (b) The department shall not require liners and leachate
1285 collection systems at individual facilities unless it
1286 demonstrates, based upon the types of waste received, the
1287 methods for controlling types of waste disposed of, the
1288 proximity of groundwater and surface water, and the results of
1289 the hydrogeological and geotechnical investigations, that the
1290 facility is reasonably expected to result in violations of
1291 groundwater standards and criteria otherwise.
1292 (c) The owner or operator shall provide financial
1293 assurance for closing of the facility in accordance with the
1294 requirements of s. 403.7125. The financial assurance shall cover

1295 the cost of closing the facility and 5 years of long-term care
1296 after closing, unless the department determines, based upon
1297 hydrogeologic conditions, the types of wastes received, or the
1298 groundwater monitoring results, that a different long-term care
1299 period is appropriate. However, unless the owner or operator of
1300 the facility is a local government, the escrow account described
1301 in s. 403.7125(2) ~~s. 403.7125(3)~~ may not be used as a financial
1302 assurance mechanism.
1303 (d) The department shall establish training requirements
1304 for operators of facilities, and shall work with the State
1305 University System or other providers to assure that adequate
1306 training courses are available. The department shall also assist
1307 the Florida Home Builders Association in establishing a
1308 component of its continuing education program to address proper
1309 handling of construction and demolition debris, including best
1310 management practices for reducing contamination of the
1311 construction and demolition debris waste stream.
1312 (e) The issuance of a permit under this subsection does
1313 not obviate the need to comply with all applicable zoning and
1314 land use regulations.
1315 (f) A permit is not required under this section for the
1316 disposal of construction and demolition debris on the property
1317 where it is generated, but such property must be covered,
1318 graded, and vegetated as necessary when disposal is complete.
1319 (g) It is the policy of the Legislature to encourage
1320 facilities to recycle. The department shall establish criteria
1321 and guidelines that encourage recycling where practical and
1322 provide for the use of recycled materials in a manner that

1323 protects the public health and the environment. Facilities are
1324 authorized to recycle, provided such activities do not conflict
1325 with such criteria and guidelines.
1326 (h) The department shall ensure that the requirements of
1327 this section are applied and interpreted consistently throughout
1328 the state. In accordance with s. 20.255, the Division of Waste
1329 Management shall direct the district offices and bureaus on
1330 matters relating to the interpretation and applicability of this
1331 section.
1332 (i) The department shall provide notice of receipt of a
1333 permit application for the initial construction of a
1334 construction and demolition debris disposal facility to the
1335 local governments having jurisdiction where the facility is to
1336 be located.
1337 (j) The Legislature recognizes that recycling, waste
1338 reduction, and resource recovery are important aspects of an
1339 integrated solid waste management program and as such are
1340 necessary to protect the public health and the environment. If
1341 necessary to promote such an integrated program, the county may
1342 determine, after providing notice and an opportunity for a
1343 hearing prior to December 31, 2006 ~~1996~~, that some or all of the
1344 wood material described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~
1345 shall be excluded from the definition of "construction and
1346 demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the
1347 jurisdiction of such county. The county may make such a
1348 determination only if it finds that, prior to June 1, 2006 ~~1996~~,
1349 the county has established an adequate method for the use or
1350 recycling of such wood material at an existing or proposed solid

1351 waste management facility that is permitted or authorized by the
1352 department on June 1, 2006 ~~1996~~. The county shall not be
1353 required to hold a hearing if the county represents that it
1354 previously has held a hearing for such purpose, nor shall the
1355 county be required to hold a hearing if the county represents
1356 that it previously has held a public meeting or hearing that
1357 authorized such method for the use or recycling of trash or
1358 other nonputrescible waste materials and if the county further
1359 represents that such materials include those materials described
1360 in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~. The county shall provide
1361 written notice of its determination to the department by no
1362 later than December 31, 2006 ~~1996~~; thereafter, the wood
1363 materials described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall
1364 be excluded from the definition of "construction and demolition
1365 debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction
1366 of such county. The county may withdraw or revoke its
1367 determination at any time by providing written notice to the
1368 department.
1369 (k) Brazilian pepper and other invasive exotic plant
1370 species as designated by the department resulting from
1371 eradication projects may be processed at permitted construction
1372 and demolition debris recycling facilities or disposed of at
1373 permitted construction and demolition debris disposal facilities
1374 or Class III facilities. The department may adopt rules to
1375 implement this paragraph.
1376 (10) ~~(13)~~ If the department and a local government
1377 independently require financial assurance for the closure of a
1378 privately owned solid waste management facility, the department

1379 and that local government shall enter into an interagency
1380 agreement that will allow the owner or operator to provide a
1381 single financial mechanism to cover the costs of closure ~~and any~~
1382 ~~required long-term care~~. The financial mechanism may provide for
1383 the department and local government to be cobeneficiaries or
1384 copayees, but shall not impose duplicative financial
1385 requirements on the owner or operator. These closure costs must
1386 include at least the minimum required by department rules and
1387 must also include any additional costs required by local
1388 ordinance or regulation.
1389 (11) ~~(14)~~ Before or on the same day of filing with the
1390 department of an application for a permit to construct or
1391 substantially modify a solid waste management facility, the
1392 applicant shall notify the local government having jurisdiction
1393 over the facility of the filing of the application. The
1394 applicant also shall publish notice of the filing of the
1395 application in a newspaper of general circulation in the area
1396 where the facility will be located. Notice shall be given and
1397 published in accordance with applicable department rules. The
1398 department shall not issue the requested permit until the
1399 applicant has provided the department with proof that the
1400 notices required by this subsection have been given. Issuance of
1401 a permit does not relieve an applicant from compliance with
1402 local zoning or land use ordinances, or with any other law,
1403 rules, or ordinances.
1404 (12) ~~(15)~~ Construction and demolition debris must be
1405 separated from the solid waste stream and segregated in separate

1406 locations at a solid waste disposal facility or other permitted
1407 site.
1408 (13) ~~(16)~~ No facility, solely by virtue of the fact that it
1409 uses processed yard trash or clean wood or paper waste as a fuel
1410 source, shall be considered to be a solid waste disposal
1411 facility.
1412 Section 15. Section 403.7071, Florida Statutes, is created
1413 to read:
1414 403.7071 Management of storm-generated debris.--Solid
1415 waste generated as a result of a storm event that is the subject
1416 of an emergency order issued by the department may be managed as
1417 follows:
1418 (1) The Department of Environmental Protection may issue
1419 field authorizations for staging areas in those counties
1420 affected by a storm event. Such staging areas may be used for
1421 the temporary storage and management of storm-generated debris,
1422 including the chipping, grinding, or burning of vegetative
1423 debris. Field authorizations may be requested by providing a
1424 notice to the local office of the department containing a
1425 description of the design and operation of the staging area; the
1426 location of the staging area; and the name, address, and
1427 telephone number of the site manager. Field authorizations also
1428 may be issued by the department staff without prior notice.
1429 Written records of all field authorizations shall be created and
1430 maintained by department staff. Field authorizations may include
1431 specific conditions for the operation and closure of the staging
1432 area and shall include a required closure date. A local
1433 government shall avoid locating a staging area in wetlands and

1434 other surface waters to the greatest extent possible, and the
1435 area that is used or affected by a staging area must be fully
1436 restored upon cessation of use of the area.
1437 (2) Storm-generated vegetative debris managed at a staging
1438 area may be disposed of in a permitted lined or unlined
1439 landfill, a permitted land clearing debris facility, or a
1440 permitted construction and demolition debris disposal facility.
1441 Vegetative debris may also be managed at a permitted waste
1442 processing facility or a registered yard trash processing
1443 facility.
1444 (3) Construction and demolition debris that is mixed with
1445 other storm-generated debris need not be segregated from other
1446 solid waste prior to disposal in a lined landfill. Construction
1447 and demolition debris that is source-separated or is separated
1448 from other hurricane-generated debris at an authorized staging
1449 area, or at another area specifically authorized by the
1450 department, may be managed at a permitted construction and
1451 demolition debris disposal or recycling facility upon approval
1452 by the department of the methods and operational practices used
1453 to inspect the waste during segregation.
1454 (4) Unsalvageable refrigerators and freezers containing
1455 solid waste, such as rotting food, which may create a sanitary
1456 nuisance may be disposed of in a permitted lined landfill;
1457 however, chlorofluorocarbons and capacitors must be removed and
1458 recycled to the greatest extent practicable using techniques and
1459 personnel meeting relevant federal requirements.
1460 (5) Local governments may conduct the burning of storm-
1461 generated yard trash and other vegetative debris in air-curtain

1462 incinerators without prior notice to the department. Demolition
1463 debris may also be burned in air-curtain incinerators if the
1464 material is limited to untreated wood. Within 10 days after
1465 commencing such burning, the local government shall notify the
1466 department in writing describing the general nature of the
1467 materials burned; the location and method of burning; and the
1468 name, address, and telephone number of the representative of the
1469 local government to contact concerning the work. The operator of
1470 the air-curtain incinerator is subject to any requirement to
1471 obtain an open-burning authorization from the Division of
1472 Forestry or any other agency empowered to grant such
1473 authorization.
1474 Section 16. Section 403.708, Florida Statutes, is amended
1475 to read:
1476 403.708 Prohibition; penalty.--
1477 (1) No person shall:
1478 (a) Place or deposit any solid waste in or on the land or
1479 waters located within the state except in a manner approved by
1480 the department and consistent with applicable approved programs
1481 of counties or municipalities. However, nothing in this act
1482 shall be construed to prohibit the disposal of solid waste
1483 without a permit as provided in s. 403.707(2).
1484 (b) Burn solid waste except in a manner prescribed by the
1485 department and consistent with applicable approved programs of
1486 counties or municipalities.
1487 (c) Construct, alter, modify, or operate a solid waste
1488 management facility or site without first having obtained from
1489 the department any permit required by s. 403.707.

1490 (2) No beverage shall be sold or offered for sale within
1491 the state in a beverage container designed and constructed so
1492 that the container is opened by detaching a metal ring or tab.
1493 (3) For purposes of subsections (2), (9), and (10):
1494 ~~(a) "Degradable," with respect to any material, means that~~
1495 ~~such material, after being discarded, is capable of decomposing~~
1496 ~~to components other than heavy metals or other toxic substances,~~
1497 ~~after exposure to bacteria, light, or outdoor elements.~~
1498 (a) ~~(b)~~ "Beverage" means soda water, carbonated natural or
1499 mineral water, or other nonalcoholic carbonated drinks; soft
1500 drinks, whether or not carbonated; beer, ale, or other malt
1501 drink of whatever alcoholic content; or a mixed wine drink or a
1502 mixed spirit drink.
1503 (b) ~~(c)~~ "Beverage container" means an airtight container
1504 which at the time of sale contains 1 gallon or less of a
1505 beverage, or the metric equivalent of 1 gallon or less, and
1506 which is composed of metal, plastic, or glass or a combination
1507 thereof.
1508 (4) The Division of Alcoholic Beverages and Tobacco of the
1509 Department of Business and Professional Regulation may impose a
1510 fine of not more than $100 on any person currently licensed
1511 pursuant to s. 561.14 for each violation of the provisions of
1512 subsection (2). If the violation is of a continuing nature, each
1513 day during which such violation occurs shall constitute a
1514 separate and distinct offense and shall be subject to a separate
1515 fine.
1516 (5) The Department of Agriculture and Consumer Services
1517 may impose a fine of not more than $100 on any person not

1518 currently licensed pursuant to s. 561.14 for each violation of
1519 the provisions of subsection (2). If the violation is of a
1520 continuing nature, each day during which such violation occurs
1521 shall constitute a separate and distinct offense and shall be
1522 subject to a separate fine.
1523 (6) Fifty percent of each fine collected pursuant to
1524 subsections (4) and (5) shall be deposited into the Solid Waste
1525 Management Trust Fund. The balance of fines collected pursuant
1526 to subsection (4) shall be deposited into the Alcoholic Beverage
1527 and Tobacco Trust Fund for the use of the division for
1528 inspection and enforcement of the provisions of this section.
1529 The balance of fines collected pursuant to subsection (5) shall
1530 be deposited into the General Inspection Trust Fund for the use
1531 of the Department of Agriculture and Consumer Services for
1532 inspection and enforcement of the provisions of this section.
1533 (7) The Division of Alcoholic Beverages and Tobacco and
1534 the Department of Agriculture and Consumer Services shall
1535 coordinate their responsibilities under the provisions of this
1536 section to ensure that inspections and enforcement are
1537 accomplished in an efficient, cost-effective manner.
1538 (8) A person may not distribute, sell, or expose for sale
1539 in this state any plastic bottle or rigid container intended for
1540 single use unless such container has a molded label indicating
1541 the plastic resin used to produce the plastic container. The
1542 label must appear on or near the bottom of the plastic container
1543 product and be clearly visible. This label must consist of a
1544 number placed inside a triangle and letters placed below the
1545 triangle. The triangle must be equilateral and must be formed by

1546 three arrows, and, in the middle of each arrow, there must be a
1547 rounded bend that forms one apex of the triangle. The pointer,
1548 or arrowhead, of each arrow must be at the midpoint of a side of
1549 the triangle, and a short gap must separate each pointer from
1550 the base of the adjacent arrow. The three curved arrows that
1551 form the triangle must depict a clockwise path around the code
1552 number. Plastic bottles of less than 16 ounces, rigid plastic
1553 containers of less than 8 ounces, and plastic casings on lead-
1554 acid storage batteries are not required to be labeled under this
1555 section. The numbers and letters must be as follows:
1556 (a) For polyethylene terephthalate, the letters "PETE" and
1557 the number 1.
1558 (b) For high-density polyethylene, the letters "HDPE" and
1559 the number 2.
1560 (c) For vinyl, the letter "V" and the number 3.
1561 (d) For low-density polyethylene, the letters "LDPE" and
1562 the number 4.
1563 (e) For polypropylene, the letters "PP" and the number 5.
1564 (f) For polystyrene, the letters "PS" and the number 6.
1565 (g) For any other, the letters "OTHER" and the number 7.
1566 (9) No person shall distribute, sell, or expose for sale
1567 in this state any product packaged in a container or packing
1568 material manufactured with fully halogenated chlorofluorocarbons
1569 (CFC). Producers of containers or packing material manufactured
1570 with chlorofluorocarbons (CFC) are urged to introduce
1571 alternative packaging materials which are environmentally
1572 compatible.

1573 (10) The packaging of products manufactured or sold in the
1574 state may not be controlled by governmental rule, regulation, or
1575 ordinance adopted after March 1, 1974, other than as expressly
1576 provided in this act.
1577 (11) Violations of this part or rules, regulations,
1578 permits, or orders issued thereunder by the department and
1579 violations of approved local programs of counties or
1580 municipalities or rules, regulations, or orders issued
1581 thereunder shall be punishable by a civil penalty as provided in
1582 s. 403.141.
1583 (12) The department or any county or municipality may also
1584 seek to enjoin the violation of, or enforce compliance with,
1585 this part or any program adopted hereunder as provided in s.
1586 403.131.
1587 (13) In accordance with the following schedule, no person
1588 who knows or who should know of the nature of such solid waste
1589 shall dispose of such solid waste in landfills:
1590 (a) Lead-acid batteries~~, after January 1, 1989~~. Lead-acid
1591 batteries also may ~~shall~~ not be disposed of in any waste-to-
1592 energy facility ~~after January 1, 1989~~. To encourage proper
1593 collection and recycling, all persons who sell lead-acid
1594 batteries at retail shall accept used lead-acid batteries as
1595 trade-ins for new lead-acid batteries.
1596 (b) Used oil~~, after October 1, 1988~~.
1597 (c) Yard trash~~, after January 1, 1992,~~ except in lined
1598 ~~unlined~~ landfills classified by department rule as Class I
1599 landfills. Yard trash that is source separated from solid waste
1600 may be accepted at a solid waste disposal area where the area

1601 provides and maintains separate yard trash composting
1602 facilities. The department recognizes that incidental amounts of
1603 yard trash may be disposed of in Class I ~~lined~~ landfills. In any
1604 enforcement action taken pursuant to this paragraph, the
1605 department shall consider the difficulty of removing incidental
1606 amounts of yard trash from a mixed solid waste stream.
1607 (d) White goods~~, after January 1, 1990~~.
1608
1609 ~~Prior to the effective dates specified in paragraphs (a)-(d),~~
1610 ~~the department shall identify and assist in developing~~
1611 ~~alternative disposal, processing, or recycling options for the~~
1612 ~~solid wastes identified in paragraphs (a)-(d).~~
1613 Section 17. Section 403.709, Florida Statutes, is amended
1614 to read:
1615 403.709 Solid Waste Management Trust Fund; use of waste
1616 tire fees.--There is created the Solid Waste Management Trust
1617 Fund, to be administered by the department.
1618 (1) ~~From~~ The annual revenues deposited in the trust fund,
1619 unless otherwise specified in the General Appropriations Act,
1620 shall be used for the following purposes:
1621 (a) ~~(1) Up to 40 percent shall be used for~~ Funding solid
1622 waste activities of the department and other state agencies,
1623 such as providing technical assistance to local governments and
1624 the private sector, performing solid waste regulatory and
1625 enforcement functions, preparing solid waste documents, and
1626 implementing solid waste education programs.
1627 (b) ~~(2) Up to 4.5 percent shall be used for~~ Funding
1628 research and training programs relating to solid waste

1629 management through the Center for Solid and Hazardous Waste
1630 Management and other organizations which can reasonably
1631 demonstrate the capability to carry out such projects.
1632 (c) ~~(3)~~ ~~Up to 11 percent shall be used for~~ Funding to
1633 supplement any other funds provided to the Department of
1634 Agriculture and Consumer Services for mosquito control. This
1635 distribution shall be annually transferred to the General
1636 Inspection Trust Fund in the Department of Agriculture and
1637 Consumer Services to be used for mosquito control, especially
1638 control of West Nile Virus.
1639 (d) ~~(4)~~ ~~Up to 4.5 percent shall be used for~~ Funding to the
1640 Department of Transportation for litter prevention and control
1641 programs ~~coordinated by Keep Florida Beautiful, Inc~~.
1642 (e) ~~(5)~~ ~~A minimum of 40 percent shall be used for~~ Funding a
1643 competitive and innovative grant program pursuant to s. 403.7095
1644 for activities relating to recycling and reducing the volume of
1645 municipal solid waste, including waste tires requiring final
1646 disposal.
1647 (2) ~~(6)~~ The department shall recover to the use of the fund
1648 from the site owner or the person responsible for the
1649 accumulation of tires at the site, jointly and severally, all
1650 sums expended from the fund pursuant to this section to manage
1651 tires at an illegal waste tire site, except that the department
1652 may decline to pursue such recovery if it finds the amount
1653 involved too small or the likelihood of recovery too uncertain.
1654 If a court determines that the owner is unable or unwilling to
1655 comply with the rules adopted pursuant to this section or s.
1656 403.717, the court may authorize the department to take

1657 possession and control of the waste tire site in order to
1658 protect the health, safety, and welfare of the community and the
1659 environment.
1660 (3) ~~(7)~~ The department may impose a lien on the real
1661 property on which the waste tire site is located and the waste
1662 tires equal to the estimated cost to bring the tire site into
1663 compliance, including attorney's fees and court costs. Any owner
1664 whose property has such a lien imposed may release her or his
1665 property from any lien claimed under this subsection by filing
1666 with the clerk of the circuit court a cash or surety bond,
1667 payable to the department in the amount of the estimated cost of
1668 bringing the tire site into compliance with department rules,
1669 including attorney's fees and court costs, or the value of the
1670 property after the abatement action is complete, whichever is
1671 less. No lien provided by this subsection shall continue for a
1672 period longer than 4 years after the completion of the abatement
1673 action unless within that time an action to enforce the lien is
1674 commenced in a court of competent jurisdiction. The department
1675 may take action to enforce the lien in the same manner used for
1676 construction liens under part I of chapter 713.
1677 (4) ~~(8)~~ This section does not limit the use of other
1678 remedies available to the department.
1679 Section 18. Subsection (5) of section 403.7095, Florida
1680 Statutes, is amended to read:
1681 403.7095 Solid waste management grant program.--
1682 (5) From the funds made available pursuant to s.
1683 403.709(1)(e) ~~s. 403.709(5)~~ for the grant program created by
1684 this section, the following distributions shall be made:

1685 (a) Up to 15 percent for the program described in
1686 subsection (1);
1687 (b) Up to 35 percent for the program described in
1688 subsection (3); and
1689 (c) Up to 50 percent for the program described in
1690 subsection (4).
1691 Section 19. Section 403.7125, Florida Statutes, is amended
1692 to read:
1693 403.7125 Financial assurance for closure ~~Landfill~~
1694 ~~management escrow account~~.--
1695 ~~(1) As used in this section:~~
1696 ~~(a) "Landfill" means any solid waste land disposal area~~
1697 ~~for which a permit, other than a general permit, is required by~~
1698 ~~s. 403.707 that receives solid waste for disposal in or upon~~
1699 ~~land other than a land spreading site, injection well, or a~~
1700 ~~surface impoundment.~~
1701 ~~(b) "Closure" means the ceasing operation of a landfill~~
1702 ~~and securing such landfill so that it does not pose a~~
1703 ~~significant threat to public health or the environment and~~
1704 ~~includes long-term monitoring and maintenance of a landfill.~~
1705 ~~(c) "Owner or operator" means, in addition to the usual~~
1706 ~~meanings of the term, any owner of record of any interest in~~
1707 ~~land whereon a landfill is or has been located and any person or~~
1708 ~~corporation which owns a majority interest in any other~~
1709 ~~corporation which is the owner or operator of a landfill.~~
1710 (1) ~~(2)~~ Every owner or operator of a landfill is jointly
1711 and severally liable for the improper operation and closure of
1712 the landfill, as provided by law. As used in this section, the

1713 term "owner or operator" means any owner of record of any
1714 interest in land wherein a landfill is or has been located and
1715 any person or corporation that owns a majority interest in any
1716 other corporation that is the owner or operator of a landfill.
1717 (2) ~~(3)~~ The owner or operator of a landfill owned or
1718 operated by a local or state government or the Federal
1719 Government shall establish a fee, or a surcharge on existing
1720 fees or other appropriate revenue-producing mechanism, to ensure
1721 the availability of financial resources for the proper closure
1722 of the landfill. However, the disposal of solid waste by persons
1723 on their own property, as described in s. 403.707(2), is exempt
1724 from the provisions of this section.
1725 (a) The revenue-producing mechanism must produce revenue
1726 at a rate sufficient to generate funds to meet state and federal
1727 landfill closure requirements.
1728 (b) The revenue shall be deposited in an interest-bearing
1729 escrow account to be held and administered by the owner or
1730 operator. The owner or operator shall file with the department
1731 an annual audit of the account. The audit shall be conducted by
1732 an independent certified public accountant. Failure to collect
1733 or report such revenue, except as allowed in subsection (3) ~~(4)~~,
1734 is a noncriminal violation punishable by a fine of not more than
1735 $5,000 for each offense. The owner or operator may make
1736 expenditures from the account and its accumulated interest only
1737 for the purpose of landfill closure and, if such expenditures do
1738 not deplete the fund to the detriment of eventual closure, for
1739 planning and construction of resource recovery or landfill
1740 facilities. Any moneys remaining in the account after paying for

1741 proper and complete closure, as determined by the department,
1742 shall, if the owner or operator does not operate a landfill, be
1743 deposited by the owner or operator into the general fund or the
1744 appropriate solid waste fund of the local government of
1745 jurisdiction.
1746 (c) The revenue generated under this subsection and any
1747 accumulated interest thereon may be applied to the payment of,
1748 or pledged as security for, the payment of revenue bonds issued
1749 in whole or in part for the purpose of complying with state and
1750 federal landfill closure requirements. Such application or
1751 pledge may be made directly in the proceedings authorizing such
1752 bonds or in an agreement with an insurer of bonds to assure such
1753 insurer of additional security therefor.
1754 (d) The provisions of s. 212.055 that relate to raising of
1755 revenues for landfill closure or long-term maintenance do not
1756 relieve a landfill owner or operator from the obligations of
1757 this section.
1758 (e) The owner or operator of any landfill that had
1759 established an escrow account in accordance with this section
1760 and the conditions of its permit prior to January 1, 2006, may
1761 continue to use that escrow account to provide financial
1762 assurance for closure of that landfill, even if that landfill is
1763 not owned or operated by a local or state government or the
1764 Federal Government.
1765 (3) ~~(4)~~ An owner or operator of a landfill owned or
1766 operated by a local or state government or by the Federal
1767 Government may provide financial assurance to ~~establish proof of~~
1768 ~~financial responsibility with~~ the department in lieu of the

1769 requirements of subsection (2) ~~(3)~~. An owner or operator of any
1770 other landfill, or any other solid waste management facility
1771 designated by department rule, shall provide financial assurance
1772 to the department for the closure of the facility. Such
1773 financial assurance ~~proof~~ may include surety bonds, certificates
1774 of deposit, securities, letters of credit, or other documents
1775 showing that the owner or operator has sufficient financial
1776 resources to cover, at a minimum, the costs of complying with
1777 applicable ~~landfill~~ closure requirements. The owner or operator
1778 shall estimate such costs to the satisfaction of the department.
1779 (4) ~~(5)~~ This section does not repeal, limit, or abrogate
1780 any other law authorizing local governments to fix, levy, or
1781 charge rates, fees, or charges for the purpose of complying with
1782 state and federal landfill closure requirements.
1783 (5) ~~(6)~~ The department shall adopt rules to implement this
1784 section.
1785 Section 20. Section 403.716, Florida Statutes, is amended
1786 to read:
1787 403.716 Training of operators of solid waste management
1788 and other facilities.--
1789 (1) The department shall establish qualifications for, and
1790 encourage the development of training programs for, operators of
1791 landfills, coordinators of local recycling programs, ~~operators~~
1792 ~~of waste-to-energy facilities, biomedical waste incinerators,~~
1793 ~~and mobile soil thermal treatment units or facilities,~~ and
1794 operators of other solid waste management facilities.
1795 (2) The department shall work with accredited community
1796 colleges, career centers, state universities, and private

1797 institutions in developing educational materials, courses of
1798 study, and other such information to be made available for
1799 persons seeking to be trained as operators of solid waste
1800 management facilities.
1801 (3) A person may not perform the duties of an operator of
1802 a landfill~~, or perform the duties of an operator of a waste-to-~~
1803 ~~energy facility, biomedical waste incinerator, or mobile soil~~
1804 ~~thermal treatment unit or facility,~~ unless she or he has
1805 completed an operator training course approved by the department
1806 or she or he has qualified as an interim operator in compliance
1807 with requirements established by the department by rule. An
1808 owner of a landfill~~, waste-to-energy facility, biomedical waste~~
1809 ~~incinerator, or mobile soil thermal treatment unit or facility~~
1810 may not employ any person to perform the duties of an operator
1811 unless such person has completed an approved landfill~~, waste-to-~~
1812 ~~energy facility, biomedical waste incinerator, or mobile soil~~
1813 ~~thermal treatment unit or facility~~ operator training course, as
1814 appropriate, or has qualified as an interim operator in
1815 compliance with requirements established by the department by
1816 rule. The department may establish by rule operator training
1817 requirements for other solid waste management facilities and
1818 facility operators.
1819 (4) The department has authority to adopt minimum
1820 standards and other rules pursuant to ss. 120.536(1) and 120.54
1821 to implement the provisions of this section. The department
1822 shall ensure the safe, healthy, and lawful operation of solid
1823 waste management facilities in this state. The department may
1824 establish by rule various classifications for operators to cover

1825 the need for differing levels of training required to operate
1826 various types of solid waste management facilities due to
1827 different operating requirements at such facilities.
1828 (5) For purposes of this section, the term "operator"
1829 means any person, including the owner, who is principally
1830 engaged in, and is in charge of, the actual operation,
1831 supervision, and maintenance of a solid waste management
1832 facility and includes the person in charge of a shift or period
1833 of operation during any part of the day.
1834 Section 21. Section 403.717, Florida Statutes, is amended
1835 to read:
1836 403.717 Waste tire and lead-acid battery requirements.--
1837 (1) For purposes of this section and ss. 403.718 and
1838 403.7185:
1839 (a) "Department" means the Department of Environmental
1840 Protection.
1841 (b) "Motor vehicle" means an automobile, motorcycle,
1842 truck, trailer, semitrailer, truck tractor and semitrailer
1843 combination, or any other vehicle operated in this state, used
1844 to transport persons or property and propelled by power other
1845 than muscular power, but the term does not include traction
1846 engines, road rollers, such vehicles as run only upon a track,
1847 bicycles, mopeds, or farm tractors and trailers.
1848 (c) "Tire" means a continuous solid or pneumatic rubber
1849 covering encircling the wheel of a motor vehicle.
1850 (d) "Waste tire" means a tire that has been removed from a
1851 motor vehicle and has not been retreaded or regrooved. "Waste
1852 tire" includes, but is not limited to, used tires and processed

1853 tires. The term does not include solid rubber tires and tires
1854 that are inseparable from the rim.
1855 (e) "Waste tire collection center" means a site where
1856 waste tires are collected from the public prior to being offered
1857 for recycling and where fewer than 1,500 tires are kept on the
1858 site on any given day.
1859 (f) "Waste tire processing facility" means a site where
1860 equipment is used to treat waste tires mechanically, chemically,
1861 or thermally so that the resulting material is a marketable
1862 product or is suitable for proper disposal ~~recapture reusable~~
1863 ~~byproducts from waste tires or to cut, burn, or otherwise alter~~
1864 ~~waste tires so that they are no longer whole~~. The term includes
1865 mobile waste tire processing equipment.
1866 (g) "Waste tire site" means a site at which 1,500 or more
1867 waste tires are accumulated.
1868 (h) "Lead-acid battery" means a ~~those~~ lead-acid battery
1869 ~~batteries~~ designed for use in motor vehicles, vessels, and
1870 aircraft, and includes such batteries when sold new as a
1871 component part of a motor vehicle, vessel, or aircraft, but not
1872 when sold to recycle components.
1873 (i) "Indoor" means within a structure that ~~which~~ excludes
1874 rain and public access and would control air flows in the event
1875 of a fire.
1876 (j) "Processed tire" means a tire that has been treated
1877 mechanically, chemically, or thermally so that the resulting
1878 material is a marketable product or is suitable for proper
1879 disposal.

1880 (k) "Used tire" means a waste tire which has a minimum
1881 tread depth of 3/32 inch or greater and is suitable for use on a
1882 motor vehicle.
1883 (2) The owner or operator of any waste tire site shall
1884 provide the department with information concerning the site's
1885 location, size, and the approximate number of waste tires that
1886 are accumulated at the site and shall initiate steps to comply
1887 with subsection (3).
1888 (3)(a) A person may not maintain a waste tire site unless
1889 such site is:
1890 1. An integral part of the person's permitted waste tire
1891 processing facility; or
1892 2. Used for the storage of waste tires prior to processing
1893 and is located at a permitted solid waste management facility.
1894 (b) It is unlawful for any person to dispose of waste
1895 tires or processed tires in the state except at a permitted
1896 solid waste management facility. Collection or storage of waste
1897 tires at a permitted waste tire processing facility or waste
1898 tire collection center prior to processing or use does not
1899 constitute disposal, provided that the collection and storage
1900 complies with rules established by the department.
1901 (c) Whole waste tires may not be deposited in a landfill
1902 as a method of ultimate disposal.
1903 (d) A person may not contract with a waste tire collector
1904 for the transportation, disposal, or processing of waste tires
1905 unless the collector is registered with the department or exempt
1906 from requirements provided under this section. Any person who
1907 contracts with a waste tire collector for the transportation of

1908 more than 25 waste tires per month from a single business
1909 location must maintain records for that location and make them
1910 available for review by the department or by law enforcement
1911 officers, which records must contain the date when the tires
1912 were transported, the quantity of tires, the registration number
1913 of the collector, and the name of the driver.
1914 (4) The department shall adopt rules to carry out the
1915 provisions of this section and s. 403.718. Such rules shall:
1916 (a) Provide for the administration or revocation of waste
1917 tire processing facility permits, including mobile processor
1918 permits;
1919 (b) Provide for the administration or revocation of waste
1920 tire collector registrations, the fees for which may not exceed
1921 $50 per vehicle registered annually;
1922 (c) Provide for the administration or revocation of waste
1923 tire collection center permits, the fee for which may not exceed
1924 $250 annually;
1925 (d) Set standards, including financial assurance
1926 standards, for waste tire processing facilities and associated
1927 waste tire sites, waste tire collection centers, waste tire
1928 collectors, and for the storage of waste tires and processed
1929 tires, including storage indoors;
1930 (e) The department may by rule exempt not-for-hire waste
1931 tire collectors and processing facilities from financial
1932 assurance requirements;
1933 (f) Authorize the final disposal of waste tires at a
1934 permitted solid waste disposal facility provided the tires have

1935 been cut into sufficiently small parts to assure their proper
1936 disposal; and
1937 (g) Allow waste tire material which has been cut into
1938 sufficiently small parts to be used as daily cover material for
1939 a landfill.
1940 ~~(5) A permit is not required for tire storage at:~~
1941 ~~(a) A tire retreading business where fewer than 1,500~~
1942 ~~waste tires are kept on the business premises;~~
1943 ~~(b) A business that, in the ordinary course of business,~~
1944 ~~removes tires from motor vehicles if fewer than 1,500 of these~~
1945 ~~tires are kept on the business premises; or~~
1946 ~~(c) A retail tire-selling business which is serving as a~~
1947 ~~waste tire collection center if fewer than 1,500 waste tires are~~
1948 ~~kept on the business premises.~~
1949 (5) ~~(6)~~ (a) The department shall encourage the voluntary
1950 establishment of waste tire collection centers at retail tire-
1951 selling businesses, waste tire processing facilities, and solid
1952 waste disposal facilities, to be open to the public for the
1953 deposit of waste tires.
1954 (b) The department is authorized to establish an
1955 incentives program for individuals to encourage them to return
1956 their waste tires to a waste tire collection center. The
1957 incentives used by the department may involve the use of
1958 discount or prize coupons, prize drawings, promotional
1959 giveaways, or other activities the department determines will
1960 promote collection, reuse, volume reduction, and proper disposal
1961 of waste tires.

1962 (c) The department may contract with a promotion company
1963 to administer the incentives program.
1964 Section 22. Section 403.7221, Florida Statutes, is
1965 transferred, renumbered as section 403.70715, Florida Statutes,
1966 and amended to read:
1967 403.70715 ~~403.7221~~ Research, development, and
1968 demonstration permits.--
1969 (1) The department may issue a research, development, and
1970 demonstration permit to the owner or operator of any solid waste
1971 management facility, including any hazardous waste management
1972 facility, who proposes to utilize an innovative and experimental
1973 solid waste treatment technology or process for which permit
1974 standards have not been promulgated. Permits shall:
1975 (a) Provide for construction and operation of the facility
1976 for not longer than 3 years ~~1 year~~, renewable no more than 3
1977 times.
1978 (b) Provide for the receipt and treatment by the facility
1979 of only those types and quantities of solid waste which the
1980 department deems necessary for purposes of determining the
1981 performance capabilities of the technology or process and the
1982 effects of such technology or process on human health and the
1983 environment.
1984 (c) Include requirements the department deems necessary
1985 which may include monitoring, operation, testing, financial
1986 responsibility, closure, and remedial action.
1987 (2) The department may apply the criteria set forth in
1988 this section in establishing the conditions of each permit

1989 without separate establishment of rules implementing such
1990 criteria.
1991 (3) For the purpose of expediting review and issuance of
1992 permits under this section, the department may, consistent with
1993 the protection of human health and the environment, modify or
1994 waive permit application and permit issuance requirements,
1995 except that there shall be no modification or waiver of
1996 regulations regarding financial responsibility or of procedures
1997 established regarding public participation.
1998 (4) The department may order an immediate termination of
1999 all operations at the facility at any time upon a determination
2000 that termination is necessary to protect human health and the
2001 environment.
2002 Section 23. Subsection (2) of section 403.201, Florida
2003 Statutes, is amended to read:
2004 403.201 Variances.--
2005 (2) No variance shall be granted from any provision or
2006 requirement concerning discharges of waste into waters of the
2007 state or hazardous waste management which would result in the
2008 provision or requirement being less stringent than a comparable
2009 federal provision or requirement, except as provided in s.
2010 403.70715 ~~s. 403.7221~~.
2011 Section 24. Section 403.722, Florida Statutes, is amended
2012 to read:
2013 403.722 Permits; hazardous waste disposal, storage, and
2014 treatment facilities.--
2015 (1) Each person who intends to or is required to
2016 construct, modify, operate, or close a hazardous waste disposal,

2017 storage, or treatment facility shall obtain a construction
2018 permit, operation permit, postclosure permit, clean closure plan
2019 approval, or corrective action permit from the department prior
2020 to constructing, modifying, operating, or closing the facility.
2021 By rule, the department may provide for the issuance of a single
2022 permit instead of any two or more hazardous waste facility
2023 permits.
2024 (2) Any owner or operator of a hazardous waste facility in
2025 operation on the effective date of the department rule listing
2026 and identifying hazardous wastes shall file an application for a
2027 temporary operation permit within 6 months after the effective
2028 date of such rule. The department, upon receipt of a properly
2029 completed application, shall identify any department rules which
2030 are being violated by the facility and shall establish a
2031 compliance schedule. However, if the department determines that
2032 an imminent hazard exists, the department may take any necessary
2033 action pursuant to s. 403.726 to abate the hazard. The
2034 department shall issue a temporary operation permit to such
2035 facility within the time constraints of s. 120.60 upon
2036 submission of a properly completed application which is in
2037 conformance with this subsection. Temporary operation permits
2038 for such facilities shall be issued for up to 3 years only. Upon
2039 termination of the temporary operation permit and upon proper
2040 application by the facility owner or operator, the department
2041 shall issue an operation permit for such existing facilities if
2042 the applicant has corrected all of the deficiencies identified
2043 in the temporary operation permit and is in compliance with all
2044 other rules adopted pursuant to this act.

2045 (3) ~~Permit~~ Applicants shall provide any information that
2046 ~~which~~ will enable the department to determine that the proposed
2047 construction, modification, operation, ~~or~~ closure, or corrective
2048 action will comply with this act and any applicable rules. In no
2049 instance shall any person construct, modify, operate, or close a
2050 facility or perform corrective actions at a facility in
2051 contravention of the standards, requirements, or criteria for a
2052 hazardous waste facility. Authorizations ~~Permits~~ issued under
2053 this section may include any permit conditions necessary to
2054 achieve compliance with applicable hazardous waste rules and
2055 necessary to protect human health and the environment.
2056 (4) The department may require, in an ~~a permit~~
2057 application, submission of information concerning matters
2058 specified in s. 403.721(6) as well as information respecting:
2059 (a) Estimates of the composition, quantity, and
2060 concentration of any hazardous waste identified or listed under
2061 this act or combinations of any such waste and any other solid
2062 waste~~,~~ proposed to be disposed of, treated, transported, or
2063 stored and the time, frequency, or rate at which such waste is
2064 proposed to be disposed of, treated, transported, or stored; and
2065 (b) The site to which such hazardous waste or the products
2066 of treatment of such hazardous waste will be transported and at
2067 which it will be disposed of, treated, or stored.
2068 (5) An authorization ~~A permit~~ issued pursuant to this
2069 section is not a vested right. The department may revoke or
2070 modify any such authorization ~~permit~~.
2071 (a) Authorizations ~~Permits~~ may be revoked for failure of
2072 the holder to comply with the provisions of this act, the terms

2073 of the authorization ~~permit~~, the standards, requirements, or
2074 criteria adopted pursuant to this act, or an order of the
2075 department; for refusal by the holder to allow lawful
2076 inspection; for submission by the holder of false or inaccurate
2077 information in the permit application; or if necessary to
2078 protect the public health or the environment.
2079 (b) Authorizations ~~Permits~~ may be modified, upon request
2080 of the holder ~~permittee~~, if such modification is not in
2081 violation of this act or department rules or if the department
2082 finds the modification necessary to enable the facility to
2083 remain in compliance with this act and department rules.
2084 (c) An owner or operator of a hazardous waste facility in
2085 existence on the effective date of a department rule changing an
2086 exemption or listing and identifying the hazardous wastes that
2087 ~~which~~ require that facility to be permitted who notifies the
2088 department pursuant to s. 403.72, and who has applied for a
2089 permit pursuant to subsection (2), may continue to operate until
2090 ~~be~~ issued a temporary operation permit. If such owner or
2091 operator intends to or is required to discontinue operation, the
2092 temporary operation permit must include final closure
2093 conditions.
2094 (6) A hazardous waste facility permit issued pursuant to
2095 this section shall satisfy the permit requirements of s.
2096 403.707(1). The permit exemptions provided in s. 403.707(2)
2097 shall not apply to hazardous waste.
2098 (7) The department may establish ~~permit~~ application
2099 procedures for hazardous waste facilities, which procedures may
2100 vary based on differences in amounts, types, and concentrations

2101 of hazardous waste and on differences in the size and location
2102 of facilities and which procedures may take into account
2103 permitting procedures of other laws not in conflict with this
2104 act.
2105 (8) For authorizations ~~permits~~ required by this section,
2106 the department may require that a fee be paid and may establish,
2107 by rule, a fee schedule based on the degree of hazard and the
2108 amount and type of hazardous waste disposed of, stored, or
2109 treated at the facility.
2110 (9) It shall not be a requirement for the issuance of ~~such~~
2111 a hazardous waste authorization ~~permit~~ that the facility
2112 complies with an adopted local government comprehensive plan,
2113 local land use ordinances, zoning ordinances or regulations, or
2114 other local ordinances. However, such an authorization ~~a permit~~
2115 issued by the department shall not override adopted local
2116 government comprehensive plans, local land use ordinances,
2117 zoning ordinances or regulations, or other local ordinances.
2118 (10) Notwithstanding ss. 120.60(1) and 403.815:
2119 (a) The time specified by law for permit review shall be
2120 tolled by the request of the department for publication of
2121 notice of proposed agency action to issue a permit for a
2122 hazardous waste treatment, storage, or disposal facility and
2123 shall resume 45 days after receipt by the department of proof of
2124 publication. If, within 45 days after publication of the notice
2125 of the proposed agency action, the department receives written
2126 notice of opposition to the intention of the agency to issue
2127 such permit and receives a request for a hearing, the department
2128 shall provide for a hearing pursuant to ss. 120.569 and 120.57,

2129 if requested by a substantially affected party, or an informal
2130 public meeting, if requested by any other person. The failure to
2131 request a hearing within 45 days after publication of the notice
2132 of the proposed agency action constitutes a waiver of the right
2133 to a hearing under ss. 120.569 and 120.57. The permit review
2134 time period shall continue to be tolled until the completion of
2135 such hearing or meeting and shall resume within 15 days after
2136 conclusion of a public hearing held on the application or within
2137 45 days after the recommended order is submitted to the agency
2138 and the parties, whichever is later.
2139 (b) Within 60 days after receipt of an application for a
2140 hazardous waste facility permit, the department shall examine
2141 the application, notify the applicant of any apparent errors or
2142 omissions, and request any additional information the department
2143 is permitted by law to require. The failure to correct an error
2144 or omission or to supply additional information shall not be
2145 grounds for denial of the permit unless the department timely
2146 notified the applicant within the 60-day period, except that
2147 this paragraph does not prevent the department from denying an
2148 application if the department does not possess sufficient
2149 information to ensure that the facility is in compliance with
2150 applicable statutes and rules.
2151 (c) The department shall approve or deny each hazardous
2152 waste facility permit within 135 days after receipt of the
2153 original application or after receipt of the requested
2154 additional information or correction of errors or omissions.
2155 However, the failure of the department to approve or deny within
2156 the 135-day time period does not result in the automatic

2157 approval or denial of the permit and does not prevent the
2158 inclusion of specific permit conditions which are necessary to
2159 ensure compliance with applicable statutes and rules. If the
2160 department fails to approve or deny the permit within the 135-
2161 day period, the applicant may petition for a writ of mandamus to
2162 compel the department to act consistently with applicable
2163 regulatory requirements.
2164 (11) Hazardous waste facility operation permits shall be
2165 issued for no more than 5 years.
2166 (12) On the same day of filing with the department of an
2167 application for a permit for the construction modification, or
2168 operation of a hazardous waste facility, the applicant shall
2169 notify each city and county within 1 mile of the facility of the
2170 filing of the application and shall publish notice of the filing
2171 of the application. The applicant shall publish a second notice
2172 of the filing within 14 days after the date of filing. Each
2173 notice shall be published in a newspaper of general circulation
2174 in the county in which the facility is located or is proposed to
2175 be located. Notwithstanding the provisions of chapter 50, for
2176 purposes of this section, a "newspaper of general circulation"
2177 shall be the newspaper within the county in which the
2178 installation or facility is proposed which has the largest daily
2179 circulation in that county and has its principal office in that
2180 county. If the newspaper with the largest daily circulation has
2181 its principal office outside the county, the notice shall appear
2182 in both the newspaper with the largest daily circulation in that
2183 county, and a newspaper authorized to publish legal notices in
2184 that county. The notice shall contain:

2185 (a) The name of the applicant and a brief description of
2186 the project and its location.
2187 (b) The location of the application file and when it is
2188 available for public inspection.
2189
2190 The notice shall be prepared by the applicant and shall comply
2191 with the following format:
2192
2193 Notice of Application
2194
2195 The Department of Environmental Protection announces receipt of
2196 an application for a permit from (name of applicant) to (brief
2197 description of project). This proposed project will be located
2198 at (location) in (county) (city).
2199
2200 This application is being processed and is available for public
2201 inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,
2202 Monday through Friday, except legal holidays, at (name and
2203 address of office).
2204
2205 (13) A permit for the construction, modification, or
2206 operation of a hazardous waste facility which initially was
2207 issued under authority of this section, may not be transferred
2208 by the permittee to any other entity, except in conformity with
2209 the requirements of this subsection.
2210 (a) At least 30 days prior to the sale or legal transfer
2211 of a permitted facility, the permittee shall file with the
2212 department an application for transfer of the permits on such

2213 form as the department shall establish by rule. The form must be
2214 completed with the notarized signatures of both the transferring
2215 permittee and the proposed permittee.
2216 (b) The department shall approve the transfer of a permit
2217 unless it determines that the proposed permittee has not
2218 provided reasonable assurances that the proposed permittee has
2219 the administrative, technical, and financial capability to
2220 properly satisfy the requirements and conditions of the permit,
2221 as determined by department rule. The determination shall be
2222 limited solely to the ability of the proposed permittee to
2223 comply with the conditions of the existing permit, and it shall
2224 not concern the adequacy of the permit conditions. If the
2225 department proposes to deny the transfer, it shall provide both
2226 the transferring permittee and the proposed permittee a written
2227 objection to such transfer together with notice of a right to
2228 request a proceeding on such determination under chapter 120.
2229 (c) Within 90 days after receiving a properly completed
2230 application for transfer of permit, the department shall issue a
2231 final determination. The department may toll the time for making
2232 a determination on the transfer by notifying both the
2233 transferring permittee and the proposed permittee that
2234 additional information is required to adequately review the
2235 transfer request. Such notification shall be served within 30
2236 days after receipt of an application for transfer of permit,
2237 completed pursuant to paragraph (a). However, the failure of the
2238 department to approve or deny within the 90-day time period does
2239 not result in the automatic approval or denial of the transfer.
2240 If the department fails to approve or deny the transfer within

2241 the 90-day period, the applicant may petition for a writ of
2242 mandamus to compel the department to act consistently with
2243 applicable regulatory requirements.
2244 (d) The transferring permittee is encouraged to apply for
2245 a permit transfer well in advance of the sale or legal transfer
2246 of a permitted facility. However, the transfer or the permit
2247 shall not be effective prior to the sale or legal transfer of
2248 the facility.
2249 (e) Until the transfer of the permit is approved by the
2250 department, the transferring permittee and any other person
2251 constructing, operating, or maintaining the permitted facility
2252 shall be liable for compliance with the terms of the permit.
2253 Nothing in this section shall relieve the transferring permittee
2254 of liability for corrective actions that may be required as a
2255 result of any violations occurring prior to the legal transfer
2256 of the permit.
2257 Section 25. Subsection (2) of section 403.7226, Florida
2258 Statutes, is amended to read:
2259 403.7226 Technical assistance by the department.--The
2260 department shall:
2261 (2) Identify short-term needs and long-term needs for
2262 hazardous waste management for the state on the basis of the
2263 information gathered through the local hazardous waste
2264 management assessments and other information from state and
2265 federal regulatory agencies and sources. The state needs
2266 assessment must be ongoing and must be updated when new data
2267 concerning waste generation and waste management technologies

2268 become available. ~~The department shall annually send a copy of~~
2269 ~~this assessment to the Governor and to the Legislature.~~
2270 Section 26. Subsection (3) of section 403.724, Florida
2271 Statutes, is amended to read:
2272 403.724 Financial responsibility.--
2273 (3) The amount of financial responsibility required shall
2274 be approved by the department upon each issuance, renewal, or
2275 modification of a hazardous waste facility authorization ~~permit~~.
2276 Such factors as inflation rates and changes in operation may be
2277 considered when approving financial responsibility for the
2278 duration of the authorization ~~permit~~. The Office of Insurance
2279 Regulation of the Department of Financial Services ~~Commission~~
2280 shall be available to assist the department in making this
2281 determination. In approving or modifying the amount of financial
2282 responsibility, the department shall consider:
2283 (a) The amount and type of hazardous waste involved;
2284 (b) The probable damage to human health and the
2285 environment;
2286 (c) The danger and probable damage to private and public
2287 property near the facility;
2288 (d) The probable time that the hazardous waste and
2289 facility involved will endanger the public health, safety, and
2290 welfare or the environment; and
2291 (e) The probable costs of properly closing the facility
2292 and performing corrective action.
2293 Section 27. Section 403.7255, Florida Statutes, is amended
2294 to read:
2295 403.7255 Placement of signs ~~Department to adopt rules~~.--

2296 (1) ~~The department shall adopt rules which establish~~
2297 ~~requirements and procedures for the placement of~~ Signs must be
2298 placed by the owner or operator at ~~sites which may have been~~
2299 ~~contaminated by hazardous wastes. Sites shall include~~ any site
2300 in the state which ~~that~~ is listed or proposed for listing on the
2301 Superfund Site List of the United States Environmental
2302 Protection Agency or any site identified by the department as a
2303 ~~suspected or confirmed contaminated~~ site contaminated by
2304 hazardous waste where there is ~~may be~~ a risk of exposure to the
2305 public. The requirements of this section shall not apply to
2306 sites reported under ss. 376.3071 and 376.3072. The department
2307 shall establish requirements and procedures for the placement of
2308 signs, and may do so in rules, permits, orders, or other
2309 authorizations. The authorization ~~rules~~ shall establish the
2310 appropriate size for such signs, which size shall be no smaller
2311 than 2 feet by 2 feet, and shall provide in clearly legible
2312 print appropriate warning language for the waste or other
2313 materials at the site and a telephone number which may be called
2314 for further information.
2315 (2) Violations of this act are punishable as provided in
2316 s. 403.161(4).
2317 (3) The provisions of this act are independent of and
2318 cumulative to any other requirements and remedies in this
2319 chapter or chapter 376, or any rules promulgated thereunder.
2320 Section 28. Subsection (5) of section 403.726, Florida
2321 Statutes, is amended to read:
2322 403.726 Abatement of imminent hazard caused by hazardous
2323 substance.--

2324 (5) The department may issue a permit or order requiring
2325 prompt abatement of an imminent hazard.
2326 Section 29. Subsection (8) of section 403.7265, Florida
2327 Statutes, is amended to read:
2328 403.7265 Local hazardous waste collection program.--
2329 (8) The department has the authority to establish an
2330 additional local project grant program enabling a local
2331 hazardous waste collection center grantee to receive funding for
2332 unique projects that improve the collection and lower the
2333 incidence of improper management of conditionally exempt or
2334 household hazardous waste. Eligible local governments may
2335 receive up to $50,000 in grant funds for these unique and
2336 innovative projects, provided they match 25 percent of the grant
2337 amount. If the department finds that the project has statewide
2338 applicability and immediate benefits to other local hazardous
2339 waste collection programs in the state, matching funds are not
2340 required. This grant will not count toward the $100,000 maximum
2341 grant amount for development of a collection center.
2342 Section 30. Section 403.885, Florida Statutes, is amended
2343 to read:
2344 403.885 Water Projects ~~Stormwater management; wastewater~~
2345 ~~management; and Water Restoration~~ Grant Program.--
2346 (1) The Department of Environmental Protection shall
2347 administer a grant program to use funds transferred pursuant to
2348 s. 212.20 to the Ecosystem Management and Restoration Trust Fund
2349 or other moneys as appropriated by the Legislature for
2350 stormwater management, wastewater management, ~~and~~ water
2351 restoration, and other water projects as specifically

2352 appropriated by the Legislature ~~project grants~~. Eligible
2353 recipients of such grants include counties, municipalities,
2354 water management districts, and special districts that have
2355 legal responsibilities for water quality improvement, water
2356 management, storm water management, wastewater management, and
2357 lake and river water restoration projects. ~~Drinking water~~
2358 ~~projects are not eligible for funding pursuant to this section.~~
2359 (2) The grant program shall provide for the evaluation of
2360 annual grant proposals. The department shall evaluate such
2361 proposals to determine if they:
2362 (a) Protect public health and the environment.
2363 (b) Implement plans developed pursuant to the Surface
2364 Water Improvement and Management Act created in part IV of
2365 chapter 373, other water restoration plans required by law,
2366 management plans prepared pursuant to s. 403.067, or other plans
2367 adopted by local government for water quality improvement and
2368 water restoration.
2369 ~~(3) In addition to meeting the criteria in subsection (2),~~
2370 ~~annual grant proposals must also meet the following~~
2371 ~~requirements:~~
2372 ~~(a) An application for a stormwater management project may~~
2373 ~~be funded only if the application is approved by the water~~
2374 ~~management district with jurisdiction in the project area.~~
2375 ~~District approval must be based on a determination that the~~
2376 ~~project provides a benefit to a priority water body.~~
2377 ~~(b) Except as provided in paragraph (c), an application~~
2378 ~~for a wastewater management project may be funded only if:~~

2379 ~~1. The project has been funded previously through a line~~
2380 ~~item in the General Appropriations Act; and~~
2381 ~~2. The project is under construction.~~
2382 ~~(c) An application for a wastewater management project~~
2383 ~~that would qualify as a water pollution control project and~~
2384 ~~activity in s. 403.1838 may be funded only if the project~~
2385 ~~sponsor has submitted an application to the department for~~
2386 ~~funding pursuant to that section.~~
2387 ~~(4) All project applicants must provide local matching~~
2388 ~~funds as follows:~~
2389 ~~(a) An applicant for state funding of a stormwater~~
2390 ~~management project shall provide local matching funds equal to~~
2391 ~~at least 50 percent of the total cost of the project; and~~
2392 ~~(b) An applicant for state funding of a wastewater~~
2393 ~~management project shall provide matching funds equal to at~~
2394 ~~least 25 percent of the total cost of the project.~~
2395
2396 ~~The requirement for matching funds may be waived if the~~
2397 ~~applicant is a financially disadvantaged small local government~~
2398 ~~as defined in subsection (5).~~
2399 ~~(5) Each fiscal year, at least 20 percent of the funds~~
2400 ~~available pursuant to this section shall be used for projects to~~
2401 ~~assist financially disadvantaged small local governments. For~~
2402 ~~purposes of this section, the term "financially disadvantaged~~
2403 ~~small local government" means a municipality having a population~~
2404 ~~of 7,500 or less, a county having a population of 35,000 or~~
2405 ~~less, according to the latest decennial census and a per capita~~
2406 ~~annual income less than the state per capita annual income as~~

2407 ~~determined by the United States Department of Commerce, or a~~
2408 ~~county in an area designated by the Governor as a rural area of~~
2409 ~~critical economic concern pursuant to s. 288.0656. Grants made~~
2410 ~~to these eligible local governments shall not require matching~~
2411 ~~local funds.~~
2412 ~~(6) Each year, stormwater management and wastewater~~
2413 ~~management projects submitted for funding through the~~
2414 ~~legislative process shall be submitted to the department by the~~
2415 ~~appropriate fiscal committees of the House of Representatives~~
2416 ~~and the Senate. The department shall review the projects and~~
2417 ~~must provide each fiscal committee with a list of projects that~~
2418 ~~appear to meet the eligibility requirements under this grant~~
2419 ~~program.~~
2420 Section 31. Paragraph (e) of subsection (3) of section
2421 373.1961, Florida Statutes, is amended to read:
2422 373.1961 Water production; general powers and duties;
2423 identification of needs; funding criteria; economic incentives;
2424 reuse funding.--
2425 (3) FUNDING.--
2426 (e) Applicants for projects that may receive funding
2427 assistance pursuant to the Water Protection and Sustainability
2428 Program shall, at a minimum, be required to pay 60 percent of
2429 the project's construction costs. The water management districts
2430 may, at their discretion, totally or partially waive this
2431 requirement for projects sponsored by financially disadvantaged
2432 small local governments ~~as defined in s. 403.885(4)~~. The water
2433 management districts or basin boards may, at their discretion,

2434 use ad valorem or federal revenues to assist a project applicant
2435 in meeting the requirements of this paragraph.
2436 Section 32. Sections 403.7075, 403.756, 403.78, 403.781,
2437 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786,
2438 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881,
2439 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, Florida
2440 Statutes, are repealed.
2441 Section 33. This act shall take effect July 1, 2006.

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 Needelman offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between lines 2440 & 2441 insert:
6
7 Section 33. (1)(a) The Department of Environmental
8 Protection shall conduct a study to determine the various
9 sources of nitrogen input into the Wekiva River and associated
10 springs contributing water to the river. The Department of
11 Environmental Protection shall prepare a report recommending
12 actions to be taken by the Department of Environmental
13 Protection and the St. Johns Water Management District that will
14 provide the best use of economic resources to reduce nitrogen
15 inputs into the river and associated springs.
16 (b) The Department of Health shall contract for a study by
17 an independent entity of sources of input of nitrogen from
18 onsite sewage treatment and disposal systems into the Wekiva
19 River and associated springs. The study shall measure the
20 concentration of nitrates in the soil 10 feet and 20 feet below
21 the drainage field of the onsite sewage treatment and disposal

22 systems. The contract shall require the entity to submit a
23 report to the Department of Health describing the locations of
24 such sources and amounts contributed by such sources and
25 containing recommendations to reduce or eliminate nitrogen
26 inputs from such sources. Rulemaking required by s. 369.318(2),
27 Florida Statutes, shall be suspended until the completion of
28 this study.
29 (c) The Department of Environmental Protection and the
30 Department of Health shall submit copies of the reports to the
31 President of the Senate and the Speaker of the House of
32 Representatives before the 2007 Regular Session of the
33 Legislature.
34 (2) The Department of Health shall develop proposed rules
35 for a model proposal applying to operation and maintenance of
36 onsite sewage treatment and disposal systems within the Wekiva
37 Study Area or the Wekiva River Protection Area. At a minimum,
38 the rules shall require each property owner in the Wekiva Study
39 Area or the Wekiva River Protection Area having an onsite sewage
40 treatment and disposal system to pump out the system at least
41 once every 5 years.
42 (3) The sum of $250,000 is appropriated from the General
43 Revenue Fund to the Department of Environmental Protection for
44 the 2006-2007 fiscal year to be used by the Department of
45 Environmental Protection to conduct the study required under
46 paragraph (1)(a).
47 (4) The sum of $250,000 is appropriated from the General
48 Revenue Fund to the Department of Health for the 2006-2007
49 fiscal year to be used for purposes of the independent study the
50 Department of Health is required to contract for under paragraph
51 (1)(b).

52
53 ========== T I T L E A M E N D M E N T ==========
54 Remove line 88 and insert:
55 requiring the Department of Environmental Protection to
56 conduct a study of sources of nitrogen input into the
57 Wekiva River and associated springs; requiring the
58 Department of Health to contract for an independent study
59 of sources of nitrogen input from onsite sewage treatment
60 and disposal systems into the Wekiva River and associated
61 springs; requiring reports; providing report requirements;
62 suspending certain department rulemaking until study
63 completion; requiring the Department of Environmental
64 Protection and Department of Health to submit copies of
65 the reports to the Legislature; requiring the Department
66 of Health to develop proposed rules for a model proposal
67 applying to operation and maintenance of onsite sewage
68 treatment and disposal systems in certain areas;
69 specifying a rule criterion; providing appropriations;
70 providing an effective date.
71

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 7133 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) Needelman offered the following:
3
4 **Amendment (title amendment)**
5 Between lines 2440 & 2441 insert:
6
7 Section 33. Landfill redevelopment--
8 A closed Class I landfill, as defined by Department of
9 Environmental Protection rule, which is substantially
10 rehabilitated or remediated in such a manner that at least
11 fifteen percent (15%) of residential units are affordable as
12 defined in Section 420.0004, F.S., is not subject to the
13 requirements of any building permit allocation system or other
14 rate of growth regulation adopted pursuant to Chapter 380,
15 Florida Statutes.
16
17
18 ========== T I T L E A M E N D M E N T ==========
19 Between lines 87 & 88 insert:
20 ensuring that affordable housing is a part of certain
21 redevelopment projects;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7159 CS PCB AG 06-03 Citrus Canker Disease Management
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	10 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee	12 Y, 0 N, w/CS	Davis	Dixon
2) State Resources Council		Kaiser	Hamby
3)			
4)			
5)			

SUMMARY ANALYSIS

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within 1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting. The eradication program has been stymied by lengthy legal battles and unprecedented weather conditions over the last few years. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

HB 7159 dismantles the current eradication plan codified in Florida statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow Florida's citrus to be marketed to other states and countries.

The bill establishes regulated zones around the perimeter of commercial citrus nurseries and prohibits the sale or movement of any citrus nursery stock under certain conditions.

The bill directs DACS to relocate foundation source trees maintained by the Division of Plant Industry to protective sites outside of the commercial citrus growing region, providing authorization to spend existing funds from the Contracts and Grants Trust Fund to relocate the Citrus Budwood facilities for protection against citrus diseases.

HB 7159 preempts the removal and destruction of citrus plants to the state and provides a date certain after which all compensation claims, including those for the Shade Dade and Shade Florida programs, will no longer be honored. It also clarifies compensation is subject to a specific appropriation.

Finally, the bill permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used. The effective date of this bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

Safeguard individual liberty: The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within 1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting.

The eradication program was nearly halted in November, 2000, by a Broward County Circuit Court order. Additional court orders in May, 2002, from the same judge continued to restrict eradication activity. The judge had declared unconstitutional the statute passed by lawmakers in the 2002 session, requiring the department to remove not only infected trees, but also exposed trees located within 1,900 feet of infected ones.

Based on research conducted by Dr. Timothy Gottwald, a scientist with the United States Department of Agriculture (USDA), "exposed to infection" refers to citrus trees located within 1,900 feet of an infected tree. This term, "exposed to infection," was codified in statute during the 2002 legislative session. At the same time, the Legislature provided for a repeal of the definition effective July 1, 2005 with a mandatory review by the Legislature prior to that date.

Applying his order statewide, the judge also struck down the portion of the law that allows for search warrants for a county-wide area. In response, DACS now obtains individual search warrants to remove infected and exposed trees and to search nearby properties to determine the extent of the outbreak. However, prior to obtaining search warrants, DACS sends Public Information Officers (PIOs) door-to-door seeking homeowner permission for tree removal.

As a result of these legal actions, the program was working under severe constraints and the disease continued to spread in southeast Florida, and was even moved by property owners to several other counties.

Every order issued by the Broward Circuit Judge was subsequently overturned by the Fourth District Court of Appeal in West Palm Beach. The question of the constitutionality of the tree removal statute went before the Florida Supreme Court and the law was upheld in February, 2004.[1]

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[1] *Haire v. Florida Department of Agriculture and Consumer Services, 870 So. 2d 774 (Fla. 2004)*

In addition to the legal delays, the spread of citrus canker bacteria was aided by the unprecedented hurricane seasons Florida experienced in 2004 and 2005. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease; a new management plan must be devised. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

Effects of Proposed Changes

The bill dismantles the current eradication plan codified in statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow for Florida to market its citrus to other states and countries. It further stipulates that such successor program to eradication maintain the agricultural lands designation for assessment purposes.

The bill prohibits the sale or movement of any citrus nursery stock, effective January 1, 2007, which has not been propagated or grown on a site approved by DACS at least one mile away from commercial citrus groves and within a protective structure approved by DACS. Citrus nurseries registered with DACS prior to April 1, 2006, are exempt from the one mile setback from commercial citrus groves while continuously operating at the April 1, 2006, location. However, these nurseries are required to propagate citrus within an approved protective structure.

DACS is given rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

The bill provides that certain types of citrus may be exempted from the regulations imposed in this legislation if the Citrus Budwood Technical Advisory Committee determines they pose no threat of introducing or spreading a citrus plant pest.

The bill authorizes DACS to establish regulated areas around the perimeter of commercial citrus nurseries established on sites after April 1, 2006, not to exceed a radius of one mile. The planting of citrus in an established regulated area is prohibited. The planting of citrus within a radius of one mile around commercial citrus nurseries established on sites prior to April 1, 2006, must be approved by DACS. Citrus plants within a regulated area that were planted prior to the establishment of the regulated area may remain unless they are determined to be infested or infected with citrus canker or citrus greening.

The bill authorizes DACS to require the removal of infected or infested citrus, non-approved planted citrus and citrus that has sprouted by natural means in regulated areas. The property owner is responsible for the removal of citrus planted without proper approval. An immediate final order (IFO) issued by DACS shall provide notice to the property owner that the citrus trees that are subject to the IFO must be removed and destroyed unless the property owner, no later than 10 days after delivery of the IFO, requests and obtains a stay of the IFO from the district court of appeal with jurisdiction to review such requests. The property owner is not required to seek a stay of the IFO from DACS prior to seeking the stay from the district court of appeal.

The bill preempts the removal and destruction of citrus plants pursuant to this section to the state. DACS is directed to relocate foundation source trees maintained by the Division of Plant Industry to protective sites located a minimum of ten miles from any commercial citrus grove. The bill authorizes DACS to expend existing funds from the Contracts and Grants Trust Fund for the purpose of relocating the foundation source trees.

The bill clarifies that compensation is subject to a specific appropriation in FY 2006-07 or prior years, and that claims for compensation under the Shade Dade or Shade Florida programs must be filed with DACS not later than December 31, 2007. After that date, all unfiled claims will expire, and the compensation section of statute will be repealed effective July 1, 2008.

Lastly, the bill permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

C. SECTION DIRECTORY:

Section 1: Amending s. 193.461, F.S.; maintains the agricultural lands designation for an eradication successor program for assessment purposes.

Section 2: Amending s. 581.184, F.S.; directs the Department of Agriculture and Consumer Services (DACS) to implement a comprehensive citrus health plan; eliminates the authority of DACS to remove and destroy citrus trees infected with citrus canker; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and posting of certain conforming orders; and, requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process.

Section 3: Creating s. 581.1843, F.S.; provides requirements relating to the propagation and distribution of citrus effective January 1, 2007; provides rule-making authority to DACS; provides exemption of certain citrus from provisions of this section; requires DACS to establish regulated areas around the perimeter of commercial citrus nurseries; provides conditions for regulated areas; preempts regulation of removal or destruction of citrus plants to the state; directs DACS to relocate certain citrus trees maintained by the Division of Plant Industry; and, authorizes expenditure of funds from designated trust fund.

Section 4: Amending s. 581.1845, F.S.; revises the terms of the citrus canker eradication compensation program.

Section 5: Amending s. 120.80, F.S.; deletes a cross reference.

Section 6: Amending s. 348.0008, F.S.; deletes a cross reference.

Section 7: Amending s. 933.02, F.S.; amending a cross reference.

Section 8: Amending s. 933.40, F.S.; deletes a cross reference.

Section 9: Amending s. 11.062, F.S.; permits the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

Section 10: Providing an effective date of on upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to researchers at the University of Florida, the estimated cost to produce citrus trees in protective structures with proper sanitation requirements will cost an additional $2 per tree. The commercial citrus industry normally uses about 3 million trees a year so the estimated fiscal impact on the private sector would be approximately $6 million per year. However if citrus trees are not produced in protective structures, there will be a great risk of these trees being infected with citrus greening. If this occurs, the new trees will die before they reach production size. The fiscal impact if only 30 percent of trees grown without protective structures were infected would be $9 million due to loss of trees alone. Over time, the law will have a positive fiscal impact on the private sector.

D. FISCAL COMMENTS:

The bill provides authorization to use existing funds to relocate the Citrus Budwood facilities for protection against citrus diseases. The House General Appropriations Act, HB 5001, provides an appropriation for this effort.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties of 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:

The bill gives the Department of Agriculture and Consumer Services rule-making authority relating to conditions under which citrus nursery stock may be propagated, grown, sold or moved and the specifications for the approved site and protective structure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted the following three amendments:

- Conforming the designation of successor programs to qualify as agricultural lands for assessment purposes.
- Clarifying that compensation is subject to specific appropriation in FY 2006-07 or prior years, and establishing a repeal date of this section of statute.

- Removing the appropriation and permitting the Department of Citrus to hire a lobbyist to represent it before the executive or legislative branch as long as general revenue funds are not used.

This analysis is drawn to the bill as amended.

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 agriculture; amending s. 193.461, F.S.;
8 revising criteria for agricultural lands taken out of
9 production by any state or federal eradication or
10 quarantine program; amending s. 581.184, F.S; requiring
11 the Department of Agriculture and Consumer Services to
12 implement a citrus health plan for certain purposes;
13 eliminating the authority of the department to remove and
14 destroy certain citrus trees; deleting definitions and
15 provisions relating to immediate final orders, notice to
16 property owners, rulemaking authority, and the posting of
17 certain orders, to conform; requiring certain law
18 enforcement officers to maintain order under certain
19 circumstances involving the citrus canker disease
20 management process; creating s. 581.1843, F.S.; making it
21 unlawful to propagate certain citrus nursery stock on or
22 after January 1, 2007, at sites and under certain
23 conditions not approved by the department; providing

24 exceptions; providing rulemaking authority; specifying
25 regulation of certain varieties of citrus plants;
26 providing exceptions; requiring the department to
27 establish certain regulated areas around commercial citrus
28 nurseries; providing exceptions; providing for notice to
29 property owners by immediate final order prior to removal
30 of certain citrus trees; providing an appeal process for
31 an immediate final order; providing for preemption to the
32 state to regulate the removal and destruction of certain
33 citrus plants; requiring the department to relocate
34 certain trees to certain locations; amending s. 581.1845,
35 F.S.; requiring certain compensation claims to be filed by
36 December 31, 2007; providing for the expiration of
37 compensation claims not filed prior to January 1, 2008;
38 providing for payment of claims by specified funding;
39 providing for future repeal; amending ss. 120.80,
40 348.0008, 933.02, and 933.40, F.S.; deleting provisions
41 and cross-references, to conform; amending s. 11.062, F.S;
42 providing an exception to the prohibition against the use
43 of state funds by certain state agencies to employ
44 lobbyists under certain circumstances; providing an
45 effective date.
46
47 Be It Enacted by the Legislature of the State of Florida:
48
49 Section 1. Subsection (7) of section 193.461, Florida
50 Statutes, is amended to read:

51 193.461 Agricultural lands; classification and assessment;
52 mandated eradication or quarantine program.--
53 (7) Lands classified for assessment purposes as
54 agricultural lands which are taken out of production by any
55 state or federal eradication or quarantine program shall
56 continue to be classified as agricultural lands for the duration
57 of such program or successor programs. Lands under these
58 programs which are converted to fallow, or otherwise nonincome-
59 producing uses shall continue to be classified as agricultural
60 lands and shall be assessed at a de minimis value of no more
61 than $50 per acre, on a single year assessment methodology;
62 however, lands converted to other income-producing agricultural
63 uses permissible under such programs shall be assessed pursuant
64 to this section. Land under a mandated eradication or quarantine
65 program which is diverted from an agricultural to a
66 nonagricultural use shall be assessed under the provisions of s.
67 193.011.
68 Section 2. Section 581.184, Florida Statutes, is amended
69 to read:
70 581.184 Adoption of rules; citrus disease management
71 ~~canker eradication; voluntary destruction agreements~~.--
72 (1) The department shall adopt by rule, pursuant to ss.
73 120.536(1) and 120.54, and implement a comprehensive citrus
74 health plan to minimize the impact of exotic citrus pests and
75 diseases to citrus production and to allow for the orderly
76 marketing of citrus fruit in other states and countries. ~~As used~~
77 ~~in this section, the term:~~

78 ~~(a) "Infected or infested" means citrus trees harboring~~
79 ~~the citrus canker bacteria and exhibiting visible symptoms of~~
80 ~~the disease.~~
81 ~~(b) "Exposed to infection" means citrus trees located~~
82 ~~within 1,900 feet of an infected tree.~~
83 ~~(2)(a) The department shall remove and destroy all~~
84 ~~infected citrus trees and all citrus trees exposed to infection.~~
85 ~~The department may destroy, by chipping, trees removed pursuant~~
86 ~~to this section. Notice of the removal of such trees, by~~
87 ~~immediate final order, shall be provided to the owner of the~~
88 ~~property on which such trees are located. An immediate final~~
89 ~~order issued by the department pursuant to this section shall~~
90 ~~notify the property owner that the citrus trees that are the~~
91 ~~subject of the immediate final order will be removed and~~
92 ~~destroyed unless the property owner, no later than 10 days after~~
93 ~~delivery of the immediate final order pursuant to subsection~~
94 ~~(3), requests and obtains a stay of the immediate final order~~
95 ~~from the district court of appeal with jurisdiction to review~~
96 ~~such requests. The property owner shall not be required to seek~~
97 ~~a stay of the immediate final order by the department prior to~~
98 ~~seeking the stay from the district court of appeal.~~
99 (2) ~~(b)~~ Regulation of the removal or destruction of citrus
100 trees pursuant to this section is hereby preempted to the state.
101 No county, municipal, or other local ordinance or other
102 regulation that would otherwise impose requirements,
103 restrictions, or conditions upon the department or its
104 contractors with respect to the removal or destruction of citrus

105 trees pursuant to this section shall be enforceable against the
106 department or its contractors.
107 ~~(3) Any immediate final order issued by the department~~
108 ~~pursuant to this section:~~
109 ~~(a) May be delivered in person, by certified mail, or by~~
110 ~~attaching the order to a conspicuous place on the property on~~
111 ~~which a citrus tree to be removed is located.~~
112 ~~(b) Is not required to be adopted by the department as a~~
113 ~~rule.~~
114 ~~(4) Simultaneously with the delivery of an immediate final~~
115 ~~order, the department shall also provide the following~~
116 ~~information to a property owner:~~
117 ~~(a) The physical location of the infected tree which has~~
118 ~~necessitated removal and destruction of the property owner's~~
119 ~~tree.~~
120 ~~(b) The diagnostic report that resulted in the~~
121 ~~determination that the infected tree is infected with the citrus~~
122 ~~canker.~~
123 (3) ~~(5)~~ The department shall ~~is directed to~~ adopt rules,
124 pursuant to ss. 120.536(1) and 120.54, regarding the conditions
125 under which citrus plants~~, other than those that are infected or~~
126 ~~exposed to infection,~~ can be grown, moved, and planted in this
127 state as may be necessary for the ~~eradication,~~ control~~,~~ or
128 prevention of the dissemination of citrus diseases ~~canker~~. Such
129 rules shall be in effect for any period during which, in the
130 judgment of the Commissioner of Agriculture, there is the threat
131 of the spread of citrus diseases ~~canker disease~~ in the state.
132 ~~Such rules may provide for the conduct of any activity regulated~~

133 ~~by such rules subject to an agreement by persons wishing to~~
134 ~~engage in such activity to voluntarily destroy, at their own~~
135 ~~expense, citrus plants declared by the department to be~~
136 ~~imminently dangerous by reason of being infected or infested~~
137 ~~with citrus canker or exposed to infection and likely to~~
138 ~~communicate same. The terms of such agreement may also require~~
139 ~~the destruction of healthy plants under specified conditions.~~
140 ~~Any such destruction shall be done after reasonable notice in a~~
141 ~~manner pursuant to and under conditions set forth in the~~
142 ~~agreement. Such agreements may include releases and waivers of~~
143 ~~liability and may require the agreement of other persons.~~
144 (4) ~~(6)~~ The department shall develop by rule, pursuant to
145 ss. 120.536(1) and 120.54, a statewide program of
146 decontamination to prevent and limit the spread of citrus canker
147 disease. Such program shall address the application of
148 decontamination procedures and practices to all citrus plants
149 and plant products, vehicles, equipment, machinery, tools,
150 objects, and persons who could in any way spread or aid in the
151 spreading of citrus canker in this state. In order to prevent
152 contamination of soil and water, such rules shall be developed
153 in consultation with the Department of Environmental Protection.
154 The department may develop compliance and other agreements which
155 it determines can aid in the carrying out of the purposes of
156 this section, and enter into such agreements with any person or
157 entity.
158 (5) ~~(7)~~ Owners or ~~and/or~~ operators of nonproduction
159 vehicles and equipment shall follow the department guidelines
160 for citrus canker decontamination effective June 15, 2000. ~~The~~

161 ~~department shall publish the guidelines in the Florida~~
162 ~~Administrative Weekly and on the department Internet website.~~
163 ~~The guidelines shall be posted no later than May 15, 2000.~~
164 (6) ~~(8)~~ Notwithstanding any provision of law, the
165 Department of Environmental Protection is not authorized to
166 institute proceedings against any person under the provisions of
167 s. 376.307(5) to recover any costs or damages associated with
168 contamination of soil or water, or the evaluation, assessment,
169 or remediation of contamination of soil or water, including
170 sampling, analysis, and restoration of soil or potable water
171 supplies, where the contamination of soil or water is determined
172 to be the result of a program of decontamination to prevent and
173 limit the spread of citrus canker disease pursuant to rules
174 developed under this section. This subsection does not limit
175 regulatory authority under a federally delegated or approved
176 program.
177 (7) ~~(9)~~ Upon request of the department, the sheriff or
178 chief law enforcement officer of each county in the state shall
179 provide assistance in obtaining access to private property for
180 the purpose of enforcing the provisions of this section. The
181 sheriff or chief law enforcement officer shall be responsible
182 for maintaining public order during the citrus disease
183 management ~~eradication~~ process and protecting the safety of
184 department employees, representatives, and agents charged with
185 implementing and enforcing the provisions of this section. The
186 department may reimburse the sheriff or chief law enforcement
187 officer for the reasonable costs of implementing the provisions
188 of this subsection.

189 ~~(10) Posting of an order on the property on which citrus~~
190 ~~trees are to be cut pursuant to the citrus canker eradication~~
191 ~~program shall meet the notice requirement of s. 120.569(1).~~
192 Section 3. Section 581.1843, Florida Statutes, is created
193 to read:
194 581.1843 Citrus nursery stock propagation and production
195 and the establishment of regulated areas around citrus
196 nurseries.--
197 (1) As used in this section the term "commercial citrus
198 grove" means a solid set planting of 40 or more citrus trees.
199 (2) Effective January 1, 2007, it is unlawful for any
200 person to propagate for sale or movement any citrus nursery
201 stock that was not propagated or grown on a site and within a
202 protective structure approved by the department and that is not
203 at least 1 mile away from commercial citrus groves. A citrus
204 nursery registered with the department prior to April 1, 2006,
205 shall not be required to comply with the 1-mile setback from
206 commercial citrus groves while continuously operating at the
207 same location for which it was registered. However, the nursery
208 shall be required to propagate citrus within a protective
209 structure approved by the department. Effective January 1, 2008,
210 it shall be unlawful to distribute any citrus nursery stock that
211 was not produced in a protective structure approved by the
212 department.
213 (3) The department shall adopt rules pursuant to ss.
214 120.536(1) and 120.54 that set forth the conditions under which
215 citrus nursery stock can be propagated, grown, sold, or moved

216 and the specifications for the approved site and protective
217 structure.
218 (4) Under the provisions of this chapter, the department
219 shall adopt rules that are consistent with scientific findings
220 and recommendations of the Citrus Budwood Technical Advisory
221 Committee to regulate all genera of the Rutaceous subfamilies
222 Aurantioideae, Rutoideae, and Toddalioideae that pose a threat
223 of introducing or spreading a citrus plant pest.
224 (5) The department shall establish regulated areas around
225 the perimeter of commercial citrus nurseries that were
226 established on sites after April 1, 2006, not to exceed a radius
227 of 1 mile. The planting of citrus in an established regulated
228 area is prohibited. The planting of citrus within a 1-mile
229 radius of commercial citrus nurseries that were established on
230 sites prior to April 1, 2006, must be approved by the
231 department. Citrus plants planted within a regulated area prior
232 to the establishment of the regulated area may remain in the
233 regulated area unless the department determines the citrus
234 plants to be infected or infested with citrus canker or citrus
235 greening. The department shall require the removal of infected
236 or infested citrus, nonapproved planted citrus, and citrus that
237 has sprouted by natural means in regulated areas. The property
238 owner shall be responsible for the removal of citrus planted
239 without proper approval. Notice of the removal of citrus trees,
240 by immediate final order of the department, shall be provided to
241 the owner of the property on which the trees are located. An
242 immediate final order issued by the department under this
243 section shall notify the property owner that the citrus trees,

244 which are the subject of the immediate final order, must be
245 removed and destroyed unless the property owner, no later than
246 10 days after delivery of the immediate final order, requests
247 and obtains a stay of the immediate final order from the
248 district court of appeal with jurisdiction to review such
249 requests. The property owner shall not be required to seek a
250 stay from the department of the immediate final order prior to
251 seeking a stay from the district court of appeal.
252 (6) Regulation of the removal or destruction of citrus
253 plants under this section is preempted to the state. No county,
254 municipal, or other local ordinance or other regulation that
255 would otherwise impose requirements, restrictions, or conditions
256 upon the department or its contractors with respect to the
257 removal or destruction of citrus trees under this section shall
258 be enforceable against the department or its contractors.
259 (7) The department shall relocate foundation source trees
260 maintained by the Division of Plant Industry from various
261 locations, including those in Dundee and Winter Haven, to
262 protective structures at the Division of Forestry nursery in
263 Chiefland or to other protective sites located a minimum of 10
264 miles from any commercial citrus grove. The department is
265 authorized to expend existing funds from its Contracts and
266 Grants Trust Fund for this purpose.
267 Section 4. Subsection (1) of section 581.1845, Florida
268 Statutes, is amended, and subsections (6) and (7) are added to
269 that section, to read:
270 581.1845 Citrus canker eradication; compensation to
271 homeowners whose trees have been removed.--

272 (1) The Department of Agriculture and Consumer Services
273 shall provide compensation to eligible homeowners whose citrus
274 trees have been removed under a citrus canker eradication
275 program. Funds to pay this compensation may be derived from both
276 state and federal matching sources and shall be specifically
277 appropriated by law. Eligible homeowners shall be compensated
278 subject to the availability of ~~appropriated~~ funds specifically
279 appropriated in fiscal year 2006-2007 or prior fiscal years for
280 that purpose.
281 (6) Any claim for compensation under this section or under
282 the Shade Dade or Shade Florida programs must be filed with the
283 department no later than December 31, 2007. Effective January 1,
284 2008, all unfiled claims shall expire.
285 (7) This section expires July 1, 2008.
286 Section 5. Paragraph (c) of subsection (2) of section
287 120.80, Florida Statutes, is amended to read:
288 120.80 Exceptions and special requirements; agencies.--
289 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--
290 ~~(c) The provisions of ss. 120.54 and 120.56 shall not~~
291 ~~apply to any statement or action by the department in~~
292 ~~furtherance of its duties pursuant to s. 581.184(2).~~
293 Section 6. Subsection (2) of section 348.0008, Florida
294 Statutes, is amended to read:
295 348.0008 Acquisition of lands and property.--
296 (2) An authority and its authorized agents, contractors,
297 and employees are authorized to enter upon any lands, waters,
298 and premises, upon giving reasonable notice to the landowner,
299 for the purpose of making surveys, soundings, drillings,

300 appraisals, environmental assessments including phase I and
301 phase II environmental surveys, archaeological assessments, and
302 such other examinations as are necessary for the acquisition of
303 private or public property and property rights, including rights
304 of access, air, view, and light, by gift, devise, purchase, or
305 condemnation by eminent domain proceedings or as are necessary
306 for the authority to perform its duties and functions; and any
307 such entry shall not be deemed a trespass or an entry that would
308 constitute a taking in an eminent domain proceeding. An
309 expressway authority shall make reimbursement for any actual
310 damage to such lands, water, and premises as a result of such
311 activities. Any entry authorized by this subsection shall be in
312 compliance with the premises protections and landowner liability
313 provisions contained in s. ~~ss.~~ 472.029 ~~and 581.184~~.
314 Section 7. Section 933.02, Florida Statutes, is amended to
315 read:
316 933.02 Grounds for issuance of search warrant.--Upon
317 proper affidavits being made, a search warrant may be issued
318 under the provisions of this chapter upon any of the following
319 grounds:
320 (1) When the property shall have been stolen or embezzled
321 in violation of law;
322 (2) When any property shall have been used:
323 (a) As a means to commit any crime;~~,~~
324 (b) In connection with gambling, gambling implements and
325 appliances;~~,~~ or
326 (c) In violation of s. 847.011 or other laws in reference
327 to obscene prints and literature;

328 (3) When any property constitutes evidence relevant to
329 proving that a felony has been committed;
330 (4) When any property is being held or possessed:
331 (a) In violation of any of the laws prohibiting the
332 manufacture, sale, and transportation of intoxicating liquors;~~,~~
333 ~~or~~
334 (b) In violation of the fish and game laws;~~, or~~
335 (c) In violation of the laws relative to food and drug;~~,~~
336 or
337 (d) In violation of the laws relative to citrus disease ~~a~~
338 ~~quarantine for citrus canker~~ pursuant to ss. ~~s.~~ 581.184 and
339 581.1845~~, or~~
340 ~~(e) Which may be inspected, treated, seized, or destroyed~~
341 ~~pursuant to s. 581.184~~; or
342 (5) When the laws in relation to cruelty to animals, as
343 provided in chapter 828, have been or are violated in any
344 particular building or place.
345
346 This section also applies to any papers or documents used as a
347 means of or in aid of the commission of any offense against the
348 laws of the state.
349 Section 8. Paragraph (f) of subsection (1) and paragraph
350 (b) of subsection (3) of section 933.40, Florida Statutes, are
351 amended to read:
352 933.40 Agriculture warrants.--
353 (1) As used in this section:
354 (f) "Plant pest" means any plant pest, noxious weed, or
355 arthropod declared a nuisance by the department pursuant to s.

356 581.031(6)~~, or any plant infected or exposed to infection as~~
357 ~~defined in s. 581.184(1)~~.
358 (3) An agriculture warrant shall be issued only upon
359 probable cause. In determining the existence of probable cause
360 for the issuance of one or more agriculture warrants, one or
361 more of the following findings may be sufficient to support a
362 determination of probable cause:
363 (b) Under all of the circumstances set forth in the
364 affidavit, there is a fair probability the property subject to
365 the agriculture warrant:
366 1. Contains a plant pest;
367 2. Is located in an area which may reasonably be suspected
368 of being infested or infected with a plant pest due to its
369 proximity to a known infestation, or if it is reasonably exposed
370 to infestation;
371 ~~3. Is located in a Section in which the department has~~
372 ~~diagnosed the presence of one or more plants infected with~~
373 ~~citrus canker as defined in s. 581.184(1)(a) or is located in a~~
374 ~~Section adjacent thereto;~~
375 3.~~4.~~ Contains animals affected with any animal pest or
376 which have been exposed to and are liable to spread the animal
377 pest; or
378 4.~~5.~~ Contains any other property that is liable to convey
379 an animal pest.
380 Section 9. Subsection (3) is added to section 11.062,
381 Florida Statutes, to read:
382 11.062 Use of state funds for lobbying prohibited;
383 penalty.--

384 (3) Notwithstanding any other provision of law, the
385 prohibitions contained in this section shall not apply to a
386 state agency established under s. 20.29, provided that no
387 general revenue funds are expended for lobbying purposes.
388 Section 10. This act shall take effect upon becoming a
389 law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7159 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 Mayfield offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 380-387
6
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove lines 41-44 and insert:
10 and cross-references, to conform; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7163 CS PCB ENVR 06-07 Wetland Mitigation
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill provides a phased approach for implementation of environmental resource permitting (ERP) in Northwest Florida (NWF) that requires the Department of Environmental Protection (DEP) and the Northwest Florida Water Management District (NWFWMD) to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for

- Stormwater management by January 1, 2007, and
- Management and Storage of Surface Waters, by July 1, 2008

Rules shall:

1. Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
2. Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
3. Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

The bill requires the DEP and the NWFWMD to enter into an operating management agreement that delegates to the water management district (WMD) the responsibility for managing ERP in NWF to the extent "resources allow" including, at a minimum, the responsibility for regulating silviculture and agriculture.

The bill prohibits a local government from adopting or enforcing an ordinance or policy that prohibits or restricts mitigation that offsets construction impacts pursuant to Part IV of Chapter 373, F.S. The bill also prohibits a local government in the NWFWMD to adopt or enforce a wetland regulatory program or criteria that is more stringent or duplicative of the ERP program once it is enacted.

If there is no appropriation to fund the program in any given fiscal year, the bill provides that law governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with the act. The bill appropriates the sum of $2,740,000 for the 2006-07 fiscal year from the General Revenue Fund to the DEP for the operational expenditures of the NWFWMD to implement this act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires the DEP and the NWFWMD to jointly execute rules for environmental resource permitting and to enter into a management agreement that delegates to the WMD the responsibilities for managing ERP in NWF to the extent "resources allow" including, "at a minimum, the responsibility for regulating silviculture and agriculture."

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The ERP program was created in 1993 when the former Department of Natural Resources and the former Department of Environmental Regulation were merged to create the DEP. The program provided a streamlined, but still comprehensive, permitting process by combining the state's dredge and fill permit with the "management and storage of surface waters" (MSSW) permit that was being issued by the water management districts. ERP goals include preventing new construction from adversely impacting the flow and storage of surface waters, and therefore protecting existing homes and structures; reducing stormwater pollution; and protecting wetlands.

The ERP program is implemented by four of the five water management districts in the state through operating agreements with DEP. However, in the NFWMD, the DEP administers an interim environmental permitting program, called the Wetlands Resource Permitting program, which is limited to wetland permitting rules in effect in 1984.

In 1993, the Legislature decided not to extend the ERP program to the NFWMD because the District didn't have the funding to fully implement it, and because the Panhandle area was projected to grow much slower than the rest of the state. (The Northwest Florida Water Management District's ad valorem millage rate is constitutionally and statutorily capped at .05 mills, which is less than one-tenth of what the other four water management districts can levy.)

Pursuant to s. 373.4145, F.S, the NFWMD is exempt from the ERP. Under this regulatory framework, the DEP processes "wetlands resource permits" for many wetlands activities within the area of the NFWMD. Currently, the area of the NFWMD is exempted from the environmental resource permitting (ERP) program by s. 373.4145, F.S., as amended, until July 1, 2010.

Under the existing authority in NWF, the DEP administers dredge and fill and stormwater programs for all non-agricultural projects under rules adopted prior to creation of the ERP program. The dredge and fill program regulates activities in most natural waterbodies and connected wetlands using boundaries determined by the 1994 unified statewide wetland delineation methodology. However, the dredge and fill program does not regulate activities in isolated wetlands.

The NWFWMD administers a limited MSSW program for non-agricultural facilities, primarily the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands.

The implementation of a full ERP program in the NWFWMD will result in changes to the current environmental regulatory programs in two areas: (1) stormwater (water quality and water quantity) and (2) isolated wetlands.

DEP has prepared a proposed rule -- Rule 62-346 -- in anticipation of the implementation of ERP in NWFWMD. If Rule 62-346 were implemented as drafted, the following changes would result in each of these areas:

Stormwater

- Water Quality - DEP's stormwater program in the NWFWMD currently regulates activities in uplands and wetlands that create new impervious areas (under Rule 17-25) and only addresses stormwater water quality and not the increased quantity of stormwater (i.e. flooding) generated by development projects.
- Water Quantity – NWFWMD administers a limited MSSW program for non-agricultural facilities, primarily the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands. The MSSW program is designed to address issues relating to water flow and flooding.
- Under the ERP program, stormwater quality and quantity would be addressed in a single environmental resource permit issued by the NWFWMD.

Isolated wetlands

- Currently, impacts to isolated wetlands are regulated by the NWFWMD only to a limited degree with regard to water flow and water quantity issues (i.e. under the NWFWMD MSSW program). They are not regulated by any state agency with regard to their habitat value.
- Under the ERP program, isolated wetlands would be regulated with regard to their habitat value.
- Under the ERP program, no distinction would be made between "isolated wetlands" and "wetlands" that are contiguous to a water body (i.e. creek, river, lake, bay, etc.). Therefore, all wetlands would be regulated regardless of whether they are isolated.
- As drafted, Rule 62-346 defines "wetlands" basically as any area that is wet enough under normal conditions to support wetland vegetation.
- The Proposed Rule exempts certain activities from regulation. Included in the exemptions are activities associated with typical agricultural practices that alter the topography of the land. However, the exemption does not apply if the alteration is "for the sole or predominant purpose of impounding or obstructing surface waters." Therefore, any activity that alters agricultural land for the purpose of filling a wetland (i.e. obstructing a wetland) would not qualify for the exemption.
- The Proposed Rule allows certain activities to be conducted under "noticed general permits." Included in those activities is "the dredging or filling of less than 100 square feet of wetlands or other surface waters." Such an activity may be undertaken after notice is provided to the NWFWMD of the landowner's intent to pursue the activity. Therefore, the filling of an isolated wetland where the wetland is less than 100 square feet in surface area could be filled through the "noticed general permit."
- Under the Proposed Rule, the filling of an isolated wetland greater than 100 square feet would require an individual permit, and the permit application would be reviewed pursuant to all the criteria listed in Proposed Rules 62-346.301 and 62-346.302 (including criteria relating to the protection of habitat for fish and wildlife) and pursuant to the requirements to modify the project to eliminate or reduce adverse impacts and to mitigate for such impacts.
- If the wetland is a "pond" that is wholly-owned and was entirely constructed in uplands, then the review of the application would be limited to the impacts of the filling on water quality and water quantity (i.e. not subject to review of impacts to fish and wildlife habitat), unless the pond provides significant habitat for threatened or endangered species.

Effect of Proposed Changes

The bill provides a phased approach for implementation of ERP in NW Florida. It requires the DEP and the NWFWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for

- Stormwater management by January 1, 2007, and
- MSSW, by July 1, 2008.

In drafting the rules, the bill directs the DEP and the NWFWMD to:

- Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
- Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
- Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

The bill requires the DEP and the NWFWMD to enter into an operating management agreement that delegates to the WMD the responsibilities for managing ERP in NWF to the extent "resources allow" including, "at a minimum, the responsibility for regulating silviculture and agriculture."

The bill grandfathers:

- Any legal activity existing before the new programs rules take effect, as long as those activities abide by the condition of their original authorization.
- Activities that have been permitted under the old NW Florida rules but not yet begun construction or operation. Activities include those that are proposed in applications prior to the implementation of the new rules. These projects may be amended if the modification "lessens the environmental impact" however; the modifications may not extend the time limit for construction by more than two years.

The bill provides statutory exemptions common to the other four WMDs, excluding exemption from the Harris Act and deletes statutory exemptions for the NWFWMD from the ERP.

The bill amends s. 373.414, F.S., to limit, on a state-wide basis, local government's ability to regulate local activities that affect surface waters or wetlands, as well as restrict what local governments within the NWFWMD may regulate. Section 373.414, F.S., which addresses additional criteria for activities in surface waters and wetlands, contemplates mitigation measures to offset adverse effects that may be caused by regulated activity (i.e., construction in wetlands). The amendment to this section prohibits:

- A local government from adopting or enforcing an ordinance or policy that prohibits or restricts mitigation that offsets construction impacts pursuant to Part IV of Chapter 373. The amendment also requires that a local government ordinance that regulates construction in wetlands to consider measures "proposed by or acceptable to the applicant" to mitigate adverse effects.
- A local government in the NWFWMD from adopting or enforcing a wetland regulatory program or criteria that is more stringent or duplicative of the ERP program once it is enacted.[1]

[1] This language appears to conflict with s. 373.441(1), F.S., contemplating delegation of ERP provisions to local governments, subject to the local governments' financial, technical, and administrative capability. Specifically, s. 373.441(1)(b) allows a locally delegated permit program to have stricter standards than state standards. In addition, the prohibition against a duplicative local government program may be unnecessary as s. 373.441(1)(c) contemplates reconciling duplicative permitting.

The bill also provides that the regulations governing development activity in Northwest Florida shall revert back to those in effect on April 1, 2006 if the Legislature fails to appropriate funds to implement this program in any given fiscal year.

Generally, the bill provides flexibility in the rulemaking process by requiring the DEP and the NWFWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area." Flexibility is achieved in the language mandating the operating management agreement by delegating responsibility to the WMD as "resources allow." The bill appropriates the sum of $2,740,000 for the 2006-07 fiscal year from the General Revenue Fund to the Department of Environmental Protection for the operational expenditures of the NWFWMD to implement this act. If resources do not allow the WMD to assume the delegated responsibilities under the operating management agreement, the bill provides the regulations governing development activity in Northwest Florida shall revert to those in effect on April 1, 2006 until such time as funding and staffing levels are restored consistent with the act.

C. SECTION DIRECTORY:

Section 1. Amends paragraph (b) of subsection (1) of s. 373.414, F.S., limiting on a state-wide basis, local government's ability to regulate local activities that affect surface waters or wetlands, as well as restricting what local governments within the NWFWMD may regulate.

Section 2. Amends s. 373.4145, F.S., providing the mechanism for implementing ERP in NWF.

Section 3. Provides an appropriation.

Section 4. Repeals section 4 of chapter 2005-273, Laws of Florida, and section 32 of chapter 2005-71, Laws of Florida.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
2. Expenditures:

	FY 06-07	FY 07-08	FY 08-09
General Revenue	($2.74 million)	($1.72 million)	($1.72 million)

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 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:

In drafting the rules, the bill directs the DEP and the NWFWMD to:

- Update the stormwater rules to improve water quality and protection, and to apply the least restrictive measures and criteria adopted by other WMDs.
- Minimally encroach upon property interests and to fashion permitting thresholds and requirements for the management and storage of surface waters to reflect the historically rural nature of the district.
- Adopt the existing exemptions and general permits adopted by the DEP and the other WMDs, and provide that any activity or structure that is exempt in any other WMD will be exempt in the NWFWMD. Furthermore, the rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment changing the appropriation from the Water Management Lands Trust Fund to the General Revenue Fund.

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 Evers offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 373.4145, Florida Statutes, is
7 reenacted and amended to read:
8 373.4145 ~~Interim~~ Part IV permitting program within the
9 geographical jurisdiction of ~~for~~ the Northwest Florida Water
10 Management District.--
11 (1) Within the geographical jurisdiction of the Northwest
12 Florida Water Management District, taking into consideration the
13 differing physical and natural characteristics of the area, the
14 department and the district shall ~~the permitting authority of~~
15 ~~the department under this part shall consist solely of the~~
16 ~~following, notwithstanding the rule adoption deadline in s.~~
17 ~~373.414(9)~~:
18 (a) Jointly develop rules to regulate the construction,
19 operation, alteration, maintenance, abandonment, and removal of
20 stormwater management systems. The department shall initiate the
21 rulemaking process within 60 days after the effective date of
22 this act and shall implement the rules no sooner than January 1,

23 2007; the district may implement the rules without adoption
24 pursuant to s. 120.54. Until the stormwater management system
25 rules take effect, chapter 62-25 ~~17-25~~, Florida Administrative
26 Code, shall remain in full force and effect~~,~~ and shall be
27 implemented by the department. Notwithstanding the provisions of
28 this section, chapter 62-25 ~~17-25~~, Florida Administrative Code,
29 may be amended by the department as necessary to comply with any
30 requirements of state or federal laws or regulations, or any
31 condition imposed by a federal program, or as a requirement for
32 receipt of federal grant funds. The intent of the rules created
33 under this paragraph is to update existing stormwater rules, to
34 improve water quality and flood protection, and to apply the
35 least restrictive measures and criteria adopted in other water
36 management district rules.
37 (b) Jointly develop rules for the management and storage
38 of surface waters under this part. The department shall initiate
39 the rulemaking process within 60 days after the effective date
40 of this act and shall implement the rules no sooner than January
41 1, 2008; the district may implement the rules without adoption
42 pursuant to s. 120.54. Until the rules for the management and
43 storage of surface waters under this part take effect, rules
44 adopted pursuant to the authority of ss. 403.91-403.929, 1984
45 Supplement to the Florida Statutes 1983, as amended, in effect
46 prior to July 1, 1994, shall remain in full force and effect~~,~~
47 and shall be implemented by the department. However, the
48 department is authorized to establish additional exemptions and
49 general permits for dredging and filling, if such exemptions or
50 general permits do not allow significant adverse impacts to
51 occur individually or cumulatively. However, for the purpose of
52 chapter 62-312 ~~17-312~~, Florida Administrative Code, the landward
53 extent of surface waters of the state identified in rule 62-

54 312.030(2) ~~17 312.030(2)~~, Florida Administrative Code, shall be
55 determined in accordance with the methodology in rules 62-
56 340.100 through 62-340.600 ~~17 340.100 through 17 340.600~~,
57 Florida Administrative Code~~, as ratified in s. 373.4211, upon~~
58 ~~the effective date of such ratified methodology~~. In implementing
59 s. 373.421(2), the department shall determine the extent of
60 those surface waters and wetlands within the regulatory
61 authority of the department as described in this paragraph. At
62 the request of the petitioner, the department shall also
63 determine the extent of surface waters and wetlands that ~~which~~
64 can be delineated by the methodology ratified in s. 373.4211,
65 but that ~~which~~ are not subject to the regulatory authority of
66 the department as described in this paragraph. The intent of the
67 rules created under this paragraph is to improve the management
68 and storage of surface waters with minimal impact on property
69 interests and to consider the rural nature, current development
70 trends, and abundant natural resources of the district relative
71 to the permitting thresholds and requirements.
72 (c) Pursue streamlining of the federal and state wetland
73 permitting programs pursuant to ss. 373.4143 and 373.4144.
74 (d) Implement, to the maximum extent possible,
75 streamlining measures, including electronic permitting, field
76 permitting, and certification programs for activities with
77 minimal individual or cumulative impact, informal wetland
78 determinations, and other similar measures.
79 (2)~~(c)~~ The department may implement chapter 40A-4, Florida
80 Administrative Code, in effect prior to July 1, 1994, pursuant
81 to an interagency agreement with the Northwest Florida Water
82 Management District adopted under s. 373.046(4).
83 (3) The rules adopted under subsection (1), as applicable,
84 shall:

85 (a) Incorporate the exemptions in ss. 373.406 and
86 403.813(2).
87 (b) Incorporate the provisions of rule 62-341.475(1)(f),
88 Florida Administrative Code, applicable to single-family homes
89 located entirely or partially within wholly owned, isolated
90 wetlands.
91 (c) Exempt from the notice and permitting requirements of
92 this part the construction or private use of a single-family
93 dwelling unit, duplex, triplex, or quadruplex that:
94 1. Is not part of a larger common plan of development or
95 sale proposed by the applicant.
96 2. Does not involve wetlands or other surface waters.
97 (d) Incorporate the exemptions and general permits that
98 are effective under this part, which have been enacted by rule
99 by the department and other water management districts,
100 including the general permits authorized by s. 403.814.
101 (e) Provide an exemption for the repair, stabilization, or
102 paving of county maintained roads, existing on or before January
103 1, 2002, and the repair or replacement of bridges that are part
104 of the roadway consistent with the provisions of s.
105 403.813(2)(t), notwithstanding the provisions of s.
106 403.813(2)(t)7. requiring adoption of a general permit
107 applicable within the Northwest Florida water Management
108 District and the repeal of said exemption upon adoption of said
109 general permit.
110 (f) Exempt from rule criteria under subsection (1)(b) an
111 alteration of a wholly owned, artificial surface water created
112 entirely from uplands that does not connect to surface waters of
113 the state, except for those created for the purpose of providing
114 mitigation under this part.

115 ~~(2) The authority of the Northwest Florida Water~~
116 ~~Management District to implement this part or to implement any~~
117 ~~authority pursuant to delegation by the department shall not be~~
118 ~~affected by this section. The rule adoption deadline in s.~~
119 ~~373.414(9) shall not apply to said district.~~
120 (4) ~~(3)~~ The department and the ~~division of permitting~~
121 ~~responsibilities in s. 373.046(4) shall not apply within the~~
122 ~~geographical jurisdiction of the~~ Northwest Florida Water
123 Management District shall enter into an operating agreement
124 under s. 373.046 to effectively implement this section and
125 provide the district with the amount of responsibility under the
126 agreement that resources allow, including, at a minimum, the
127 responsibility for regulating silviculture and agriculture. The
128 operating agreement shall encourage local delegation of the
129 responsibilities under this section pursuant to s. 373.441.
130 (5) The provisions of s. 373.414(11)-(14) shall not apply
131 to rules adopted under this section.
132 (6) The following activities shall continue to be governed
133 by the provisions of s. 373.4145, Florida Statutes 1994:
134 (a) The operation and routine custodial maintenance of
135 activities legally in existence before the effective date of the
136 rules adopted under subsection (1), as long as the terms and
137 conditions of the permit, exemption, or other authorization for
138 such activities continue to be met.
139 (b) The activities approved in a permit issued pursuant to
140 s. 373.4145, Florida Statutes 1994, and the review of activities
141 proposed in applications received and completed before the
142 effective date of the rules adopted under subsection (1), as
143 applicable. This paragraph shall also apply to any modification
144 of the plans, terms, and conditions of a permit issued pursuant
145 to s. 373.4145, Florida Statutes 1994, that lessens the

146 environmental impact, except that any such modification shall
147 not extend the time limit for construction beyond 2 additional
148 years.
149
150 This subsection shall not apply to any activity that is altered,
151 modified, expanded, abandoned, or removed after adoption of the
152 applicable rules under subsection (1).
153 (7) Unless the petitioner elects to apply rule 62-340,
154 Florida Administrative Code, to all wetlands, the delineation of
155 the landward extent of wetlands and other surface waters for
156 petitions filed under s. 373.421(2) prior to the effective date
157 of the rules adopted under paragraph (1)(b) shall continue to be
158 determined in accordance with rule 62-312.030(2), Florida
159 Administrative Code, in effect July 1, 1994, and rules 62-
160 340.100 through 62-340.600, Florida Administrative Code, as
161 ratified in s. 373.4211.
162 ~~(4) If the United States Environmental Protection Agency~~
163 ~~approves an assumption of the federal program to regulate the~~
164 ~~discharge of dredged or fill material by the department or the~~
165 ~~water management districts, or both, pursuant to s. 404 of the~~
166 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
167 ~~1251 et seq.; the United States Army Corps of Engineers issues~~
168 ~~one or more state programmatic general permits under the~~
169 ~~referenced statutes; or the United States Environmental~~
170 ~~Protection Agency or the United States Corps of Engineers~~
171 ~~approves any other delegation of regulatory authority under the~~
172 ~~referenced statutes, then the department may implement any~~
173 ~~permitting authority granted in this part within the Northwest~~
174 ~~Florida Water Management District which is prescribed as a~~
175 ~~condition of granting such assumption, general permit, or~~
176 ~~delegation.~~

177 (8) ~~(5)~~ Within the geographical jurisdiction of the
178 Northwest Florida Water Management District, the methodology for
179 determining the landward extent of surface waters of the state
180 under chapter 403 in effect prior to the effective date of the
181 methodology ratified in s. 373.4211 shall apply to:
182 (a) Activities permitted under the rules adopted pursuant
183 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
184 1983, as amended, or that ~~which~~ were exempted from regulation
185 under such rules, prior to July 1, 1994, and that ~~which~~ were
186 permitted under chapter 62-25 ~~17-25~~, Florida Administrative
187 Code, or exempt from chapter 62-25 ~~17-25~~, Florida Administrative
188 Code, prior to July 1, 1994, provided:
189 1. An activity authorized by such permits is conducted in
190 accordance with the plans, terms, and conditions of such
191 permits.
192 2. An activity exempted from the permitting requirements
193 of the rules adopted pursuant to ss. 403.91-403.929, 1984
194 Supplement to the Florida Statutes 1983, as amended, or chapter
195 62-25 ~~17-25~~, Florida Administrative Code, is:
196 a. Commenced prior to July 1, 1994, and completed by July
197 1, 1999;
198 b. Conducted in accordance with a plan depicting the
199 activity that ~~which~~ has been submitted to and approved for
200 construction by the department, the appropriate local
201 government, the United States Army Corps of Engineers, or the
202 Northwest Florida Water Management District; and
203 c. Conducted in accordance with the terms of the
204 exemption.
205 (b) An activity within the boundaries of a valid
206 jurisdictional declaratory statement issued pursuant to s.
207 403.914, 1984 Supplement to the Florida Statutes 1983, as

208 amended, or the rules adopted thereunder, in response to a
209 petition received prior to June 1, 1994.
210 (c) Any modification of a permitted or exempt activity as
211 described in paragraph (a) that ~~which~~ does not constitute a
212 substantial modification or that ~~which~~ lessens the environmental
213 impact of such permitted or exempt activity. For the purposes of
214 this section, a substantial modification is one that ~~which~~ is
215 reasonably expected to lead to substantially different
216 environmental impacts.
217 (d) Applications for activities permitted under the rules
218 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
219 1983 Florida Statutes, as amended, that ~~which~~ were pending on
220 June 15, 1994, unless the application elects to have applied the
221 delineation methodology ratified in s. 373.4211.
222 (9) Subsections (2) and (8) are repealed on the effective
223 date of the rules adopted under subsection (1).
224 (10) If the Legislature in any given fiscal year fails to
225 fund and staff the environmental resource permitting program
226 established under this section, the environmental resource
227 permitting program shall be suspended for that fiscal year and
228 the rules and statutes governing development activity in the
229 district shall revert to those in effect on April 1, 2006, until
230 such time as funding and staffing levels are restored consistent
231 with this section.
232 ~~(6) Subsections (1), (2), (3), and (4) shall be repealed~~
233 ~~effective July 1, 2006.~~
234 Section 2. On or before October 1, 2006, the Department of
235 Environmental Protection shall enter into negotiations with any
236 local government within the Northwest Florida Water Management
237 District that requests to be delegated the responsibilities
238 under this act pursuant to s. 373.441, Florida Statutes, in

239 order to minimize duplicative permitting programs and increase
240 governmental efficiency while maintaining environmental
241 standards. The department shall report to the President of the
242 Senate and the Speaker of the House of Representatives by March
243 1, 2007, regarding progress made in the negotiation of
244 environmental permitting with any local government and
245 delegation of responsibilities thereto in accordance with this
246 section.
247 Section 3. The sum of $2,740,000 is appropriated from the
248 General Revenue Fund to the Department of Environmental
249 Protection for the 2006-2007 fiscal year for the operational
250 expenditures of the Northwest Florida Water Management District
251 pursuant to s. 373.4145, Florida Statutes, as amended by this
252 act.
253 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
254 and section 32 of chapter 2005-71, Laws of Florida, are
255 repealed.
256 Section 5. This act shall take effect July 1, 2006.
257
258 ========== T I T L E A M E N D M E N T ==========
259 Remove the entire title and insert:
260 A bill to be entitled
261 An act relating to environmental permitting; reenacting
262 and amending s. 373.4145, F.S.; requiring the Northwest
263 Florida Water Management District and the Department of
264 Environmental Protection to jointly develop rules for the
265 regulation of certain activities related to stormwater
266 management systems and the management and storage of
267 surface waters; requiring the district and the department
268 to streamline federal and state wetland permitting
269 programs and to implement such measures; requiring certain

270 exemptions and provisions for rules relating to certain
271 dwellings; requiring the department and district to
272 incorporate certain exemptions and general permits in
273 joint rules; exempting certain activities and structures
274 from permitting requirements; requiring the department and
275 the district to enter into an operating agreement for the
276 implementation of certain provisions; requiring the
277 district to be responsible for the regulation and local
278 delegation of certain activities; providing for continuing
279 operation of certain earlier law; repealing certain
280 provisions upon the adoption of rules; providing effect
281 for failure to fund in any given fiscal year; requiring
282 the department to negotiate with local governments in the
283 district for delegation of responsibility for certain
284 permitting; requiring the department to report to the
285 Legislature by a certain date; providing an appropriation
286 for operational expenses of the district; repealing s. 4
287 of ch. 2005-273, Laws of Florida, and s. 32 of ch. 2005-
288 71, Laws of Florida, which specified dates certain for the
289 repeal of certain provisions relating to permitting in the
290 district; providing an effective date.

State Resources Council

Wednesday, April 19, 2006
8:30 AM
Reed Hall

ADDENDUM A (4/18/06; 6:05 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	____	

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1 Council/Committee hearing bill: State Resources Council
2 Representative Needelman offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 1003 and 1004 insert:
6 Section 14. Section 403.70611, Florida Statutes, is
7 amended to read:
8 403.70611 Requirements relating to solid waste disposal
9 facility and Class I landfill permitting.--
10 (1) Local government applicants for a permit to construct
11 or expand a Class I landfill are encouraged to consider
12 construction of a waste-to-energy facility as an alternative to
13 additional landfill space.
14 (2) A closed Class I landfill that is substantially
15 rehabilitated or remediated in such a manner that at least 15
16 percent of the residential units are affordable as defined in s.
17 420.0004(3) is not subject to the requirements of any building
18 permit allocation system or other rate of growth regulation
19 adopted pursuant to chapter 380.
20
21 ========== T I T L E A M E N D M E N T ==========

22 Remove line 40 and insert:
23 provisions governing dredged material; amending s.
24 403.70611, F.S.; exempting certain Class I landfills from
25 certain permit and regulation requirements; amending s.