Committee on Environmental Regulation

Wednesday, March 15, 2006
2:30 – 5:30 PM
212 Knott

Allan G. Bense
Speaker

Mitch Needelman
Chair

AGENDA
Environmental Regulation Committee
March 15, 2006
2:30 p.m. – 5:30 p.m.
212 Knott

I. Call to Order/Roll Call

II. Opening Remarks

III. HB 1155 by Evers – relating to Contaminated Drycleaning Facilities

IV. HB 1249 by Kendrick – relating to Funding for the Management and Restoration of Apalachicola Bay

V. PCB ENVR 06-02 – relating to Redevelopment of Brownfields

VI. PCB ENVR 06-04 – relating to Conservation and Protection of Natural Resources

VII. PCB ENVR 06-05 – relating to Environmental Protection

VIII. Closing Remarks and Adjournment

HB 1155

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1155 Contaminated Drycleaning Facilities
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:** SB 2174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Kliner	Kliner
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill will effectively re-open the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility where there is contamination at the site as a result of an accident that occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the DSC Program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

The fiscal impact is indeterminate. The Department of Environmental Protection (the DEP) knows of just one contaminated site that is not included in the program that may be eligible under the proposed law. There is no meaningful way to estimate how many claims of this type could be filed in the future resulting from accidents that occurred as contemplated by the bill language.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility: This bill effectively re-opens the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility and there is contamination at the site as a result of an accident.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dry Cleaning Generally:
Dry cleaners are facilities engaged in the cleaning of fabrics in a nonaqueous solvent by means of one or more washes in a solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. Such facilities include a washer, dryer, filter, and purification systems, emission control equipment, waste disposal systems, holding tanks, pumps and attendant piping and valves.

Dry cleaning facilities utilizing the solvent perchloroethylene, or "perc," which is considered an air toxic or hazardous pollutant, are eligible to operate as a business in Florida under the terms of a Title V air permit pursuant to the requirements of Chapter 62-213, Florida Administrative Code.

Drycleaning Solvent Cleanup Program History:
In 1994, the Legislature enacted Chapter 94-355, Laws of Florida., to provide a source of funding for rehabilitation of sites and drinking water supplies contaminated by dry cleaning solvents. The act provided for the establishment of a registration program under which dry cleaning facilities and wholesale suppliers were to register by June 30, 1995.

The Drycleaning Solvent Cleanup Program is administered by the DEP. Eligibility criteria for participation are as follows:

- The facility must have registered with the department.
- The facility was determined to have complied with department rules.
- The facility was not operated in a grossly negligent manner.
- The facility was not listed on the Federal "Superfund" list.
- The facility was not under orders from the U. S. Environmental Protection Agency (EPA) and was not required to have a hazardous waste permit.

Further, the real property owner or the owner or operator of the dry cleaning facility or the wholesale supply facility must not have willfully concealed the discharge of dry cleaning solvents, must have remitted all taxes due, must have provided evidence of contamination by dry cleaning solvents pursuant to DEP rules, and must have reported the contamination prior to December 31, 2005.

Generally, the program provides that the cleanup costs are to be absorbed at the expense of the dry cleaning funds available in the Water Quality Assurance Trust Fund. Deductibles are paid by the applicant as follows:

- For contamination reported by 6/30/97 -- $1,000 per incident.
- For contamination reported from 7/1/97 thru 9/30/98 -- $5,000 per incident.
- For contamination reported from 10/1/98 thru 12/31/98 -- $10,000 per incident.

For contamination reported after December 31, 1998, no cleanup costs will be absorbed at the expense of the dry cleaning restoration funds. In other words, contamination reported after this date will be cleaned up at the expense of the reporting entity.

Liability Protection is Provided Under the Program:
Dry cleaning facility owners or operators, wholesale supply facilities, and real property owners are afforded certain liability protections and are not subject to administrative or judicial action brought by or on behalf of any person, or state or local government, for dry cleaning solvents discharges provided certain specified conditions are met. Each owner or operator of a currently operating dry cleaning facility must obtain third-party liability insurance for $1 million.

A real property owner may conduct a voluntary cleanup pursuant to DEP rules whether or not the facility has been determined by the DEP to be eligible for the program. A real property owner or any other party that conducts such voluntary cleanup may not seek cost recovery from the program funds, but is immune from liability to any person, or state or local government, to compel site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, so long as the real property owner complies with certain specified conditions.

Funding the Program
Funding for the program comes from three main sources:

- A two percent tax on gross receipts on businesses engaged in dry cleaning and laundering,
- A $5 per gallon tax on perc sold to facilities in the state, a deductible payment based on the date of application for the program, and
- A $100 registration fee collected from the facilities.

According to the DEP, the annual collections have averaged $7.6 million. There are over 1,400 sites in the closed program and at the current rate of clean-up, it will take over 60 years to clean-up all sites.

Effect of Proposed Changes

The bill will effectively re-open the DSC Program for a person who owns or operates (or owned or operated) a dry cleaning facility where there is (or was) contamination at the site as a result of an accident which occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

> Example 1: On April 6, 2004, a dump truck driver sets the parking brake and leaves the cab of his vehicle to check his load. The braking system fails and the truck rolls down a hill and crashes into the Pressed 4 Time dry-cleaning facility, extensively damaging the building and breaching the perc storage container. The spill is otherwise controlled by the containment system that was installed by the owner; however, the firemen responding to the accident hoses down the site which results in a perc contamination of the surrounding land area. Under the proposed law, the Pressed 4 Time owner/operator would not be permitted to submit the site for cleanup under the otherwise closed program.

> Example 2: The same scenario as above, except the date of the accident occurred on April 6, 1974. The owner did not file an application under the program. Under the proposed law, the owner would be eligible for cleanup under the otherwise closed program.

Example 3: The same scenario as above, except that the responders do not hose down the site and do not exacerbate the spill. As such, the conditions do not permit eligibility into the program and any contamination will be the responsibility of the owner/operator.

C. SECTION DIRECTORY:

Section 1 Amends s. 376.3078, Florida Statutes, adding a new paragraph (i) to subsection (3), and redesignating all subsequent paragraphs, providing that a dry cleaning facility where there exists contamination as a result of an accident that occurred prior to January 1, 1975, is eligible under the Drycleaning Solvent Cleanup Program, regardless of whether an application for eligibility was filed on or before the termination date of the program. This section also provides a definition of the term "accident."

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Part II, Section D. Fiscal Comments.

2. Expenditures:

   See Part II, Section D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would re-open the Drycleaning Solvent Cleanup Program for an owner or operator of a dry cleaning facility with contamination that is the result of an accident that occurred prior to January 1, 1975, and which the contamination was caused or exacerbated by responders to the accident.

D. FISCAL COMMENTS:

The program originally provided for deductibles paid by the applicant. The deductible amounts varied in cost from $1,000 to $10,000, depending on the date the application was filed. The bill does not provide for deductibles so it is assumed that the entire cost of the cleanup would be borne by the trust fund.

Clean-up of a contaminated facility can range from approximately $30,000 to $2 million; the average cost being approximately $475,000. The DEP knows of only one incident whereby an auto accident and the actions of responders exacerbated a spill of perc. The site in question is not currently eligible for inclusion in the program for clean-up. The DEP has no record of how many other potential sites may be affected by this proposed legislation. According to the DEP, if the program is not reopened as envisioned by the bill and under current funding levels, the clean-up will take approximately 60 years.

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 rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to contaminated drycleaning facilities;
3 amending s. 376.3078, F.S.; providing that contaminated
4 drycleaning facilities damaged by accident prior to a
5 specified date are eligible for state-funded site
6 rehabilitation; defining the term "accident"; providing an
7 effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (3) of section 376.3078, Florida
12 Statutes, is amended to read:
13 376.3078 Drycleaning facility restoration; funds; uses;
14 liability; recovery of expenditures.--
15 (3) REHABILITATION LIABILITY.--
16 (a) In accordance with the eligibility provisions of this
17 section, a real property owner, nearby real property owner, or
18 person who owns or operates, or who otherwise could be liable as
19 a result of the operation of, a drycleaning facility or a
20 wholesale supply facility is not liable for or subject to
21 administrative or judicial action brought by or on behalf of any
22 state or local government or agency thereof or by or on behalf
23 of any person to compel rehabilitation or pay for the costs of
24 rehabilitation of environmental contamination resulting from the
25 discharge of drycleaning solvents. Subject to the delays that
26 may occur as a result of the prioritization of sites under this
27 section for any qualified site, costs for activities described
28 in paragraph (2)(b) shall be absorbed at the expense of the

29 drycleaning facility restoration funds, without recourse to
30 reimbursement or recovery from the real property owner, nearby
31 real property owner, or owner or operator of the drycleaning
32 facility or the wholesale supply facility. Notwithstanding any
33 other provision of this chapter, this subsection applies to
34 causes of action accruing on or after the effective date of this
35 act and applies retroactively to causes of action accruing
36 before the effective date of this act for which a lawsuit has
37 not been filed before the effective date of this act.
38 (b) With regard to drycleaning facilities or wholesale
39 supply facilities that have operated as drycleaning facilities
40 or wholesale supply facilities on or after October 1, 1994, any
41 such drycleaning facility or wholesale supply facility at which
42 there exists contamination by drycleaning solvents shall be
43 eligible under this subsection regardless of when the
44 drycleaning contamination was discovered, provided that the
45 drycleaning facility or the wholesale supply facility:
46 1. Has been registered with the department;
47 2. Is determined by the department to be in compliance
48 with the department's rules regulating drycleaning solvents,
49 drycleaning facilities, or wholesale supply facilities on or
50 after November 19, 1980;
51 3. Has not been operated in a grossly negligent manner at
52 any time on or after November 19, 1980;
53 4. Has not been identified to qualify for listing, nor is
54 listed, on the National Priority List pursuant to the
55 Comprehensive Environmental Response, Compensation, and
56 Liability Act of 1980 as amended by the Superfund Amendments and

57 Reauthorization Act of 1986, and as subsequently amended;
58 5. Is not under an order from the United States
59 Environmental Protection Agency pursuant to s. 3008(h) of the
60 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
61 s. 6928(h)), or has not obtained and is not required to obtain a
62 permit for the operation of a hazardous waste treatment,
63 storage, or disposal facility, a postclosure permit, or a permit
64 pursuant to the federal Hazardous and Solid Waste Amendments of
65 1984;
66
67 and provided that the real property owner or the owner or
68 operator of the drycleaning facility or the wholesale supply
69 facility has not willfully concealed the discharge of
70 drycleaning solvents and has remitted all taxes due pursuant to
71 ss. 376.70 and 376.75, has provided documented evidence of
72 contamination by drycleaning solvents as required by the rules
73 developed pursuant to this section, has reported the
74 contamination prior to December 31, 1998, and has not denied the
75 department access to the site.
76 (c) With regard to drycleaning facilities or wholesale
77 supply facilities that cease to be operated as drycleaning
78 facilities or wholesale supply facilities prior to October 1,
79 1994, such facilities, at which there exists contamination by
80 drycleaning solvents, shall be eligible under this subsection
81 regardless of when the contamination was discovered, provided
82 that the drycleaning facility or wholesale supply facility:
83 1. Was not determined by the department, within a
84 reasonable time after the department's discovery, to have been

85 out of compliance with the department rules regulating
86 drycleaning solvents, drycleaning facilities, or wholesale
87 supply facilities implemented at any time on or after November
88 19, 1980;
89 2. Was not operated in a grossly negligent manner at any
90 time on or after November 19, 1980;
91 3. Has not been identified to qualify for listing, nor is
92 listed, on the National Priority List pursuant to the
93 Comprehensive Environmental Response, Compensation, and
94 Liability Act of 1980, as amended by the Superfund Amendments
95 and Reauthorization Act of 1986, and as subsequently amended;
96 and
97 4. Is not under an order from the United States
98 Environmental Protection Agency pursuant to s. 3008(h) of the
99 Resource Conservation and Recovery Act, as amended, or has not
100 obtained and is not required to obtain a permit for the
101 operation of a hazardous waste treatment, storage, or disposal
102 facility, a postclosure permit, or a permit pursuant to the
103 federal Hazardous and Solid Waste Amendments of 1984;
104
105 and provided that the real property owner or the owner or
106 operator of the drycleaning facility or the wholesale supply
107 facility has not willfully concealed the discharge of
108 drycleaning solvents, has provided documented evidence of
109 contamination by drycleaning solvents as required by the rules
110 developed pursuant to this section, has reported the
111 contamination prior to December 31, 1998, and has not denied the
112 department access to the site.

113 (d) For purposes of determining eligibility, a drycleaning
114 facility or wholesale supply facility was operated in a grossly
115 negligent manner if the department determines that the owner or
116 operator of the drycleaning facility or the wholesale supply
117 facility:
118 1. Willfully discharged drycleaning solvents onto the
119 soils or into the waters of the state after November 19, 1980,
120 with the knowledge, intent, and purpose that the discharge would
121 result in harm to the environment or to public health or result
122 in a violation of the law;
123 2. Willfully concealed a discharge of drycleaning solvents
124 with the knowledge, intent, and purpose that the concealment
125 would result in harm to the environment or to public health or
126 result in a violation of the law; or
127 3. Willfully violated a local, state, or federal law or
128 rule regulating the operation of drycleaning facilities or
129 wholesale supply facilities with the knowledge, intent, and
130 purpose that the act would result in harm to the environment or
131 to public health or result in a violation of the law.
132 (e)1. With respect to eligible drycleaning solvent
133 contamination reported to the department as part of a completed
134 application as required by the rules developed pursuant to this
135 section by June 30, 1997, the costs of activities described in
136 paragraph (2)(b) shall be absorbed at the expense of the
137 drycleaning facility restoration funds, less a $1,000 deductible
138 per incident, which shall be paid by the applicant or current
139 property owner. The deductible shall be paid within 60 days
140 after receipt of billing by the department.

141 2. For contamination reported to the department as part of
142 a completed application as required by the rules developed under
143 this section, from July 1, 1997, through September 30, 1998, the
144 costs shall be absorbed at the expense of the drycleaning
145 facility restoration funds, less a $5,000 deductible per
146 incident. The deductible shall be paid within 60 days after
147 receipt of billing by the department.
148 3. For contamination reported to the department as part of
149 a completed application as required by the rules developed
150 pursuant to this section from October 1, 1998, through December
151 31, 1998, the costs shall be absorbed at the expense of the
152 drycleaning facility restoration funds, less a $10,000
153 deductible per incident. The deductible shall be paid within 60
154 days after receipt of billing by the department.
155 4. For contamination reported after December 31, 1998, no
156 costs will be absorbed at the expense of the drycleaning
157 facility restoration funds.
158 (f) ~~The provisions of~~ This subsection does ~~shall~~ not apply
159 to any site where the department has been denied site access to
160 implement the provisions of this section.
161 (g) In order to identify those drycleaning facilities and
162 wholesale supply facilities that have experienced contamination
163 resulting from the discharge of drycleaning solvents and to
164 ensure the most expedient rehabilitation of such sites, the
165 owners and operators of drycleaning facilities and wholesale
166 supply facilities are encouraged to detect and report
167 contamination from drycleaning solvents related to the operation
168 of drycleaning facilities and wholesale supply facilities. The

169 department shall establish reasonable guidelines for the written
170 reporting of drycleaning contamination and shall distribute
171 forms to registrants under s. 376.303(1)(d), and to other
172 interested parties upon request, to be used for such purpose.
173 (h) A report of drycleaning solvent contamination at a
174 drycleaning facility or wholesale supply facility made to the
175 department by any person in accordance with this subsection, or
176 any rules promulgated pursuant hereto, may not be used directly
177 as evidence of liability for such discharge in any civil or
178 criminal trial arising out of the discharge.
179 (i) A drycleaning facility at which contamination by
180 drycleaning solvents exists and which was damaged by accident
181 prior to January 1, 1975, is eligible under this subsection,
182 regardless of whether an application for eligibility was filed
183 on or before December 31, 1998. As used in this paragraph, the
184 term "accident" means an unplanned and unanticipated occurrence
185 beyond the control of the owner or operator of a drycleaning
186 facility which resulted in physical damage to the facility when
187 the actions of responders to such occurrence could reasonably be
188 determined to have caused or exacerbated contamination by
189 drycleaning solvents at such facility.
190 (j) ~~(i)~~ ~~The provisions of~~ This subsection does ~~shall~~ not
191 apply to drycleaning facilities owned or operated by the state
192 or Federal Government.
193 (k) ~~(j)~~ Due to the value of Florida's potable water, it is
194 the intent of the Legislature that the department initiate and
195 facilitate as many cleanups as possible utilizing the resources
196 of the state, local governments, and the private sector. The

197 department is authorized to adopt necessary rules and enter into
198 contracts to carry out the intent of this subsection and to
199 limit or prevent future contamination from the operation of
200 drycleaning facilities and wholesale supply facilities.
201 (l) ~~(k)~~ It is not the intent of the Legislature that the
202 state become the owner or operator of a drycleaning facility or
203 wholesale supply facility by engaging in state-conducted
204 cleanup.
205 (m) ~~(l)~~ The owner, operator, and either the real property
206 owner or agent of the real property owner may apply for the
207 Drycleaning Contamination Cleanup Program by jointly submitting
208 a completed application package to the department pursuant to
209 the rules that shall be adopted by the department. If the
210 application cannot be jointly submitted, then the applicant
211 shall provide notice of the application to other interested
212 parties. After reviewing the completed application package, the
213 department shall notify the applicant in writing as to whether
214 the drycleaning facility or wholesale supply facility is
215 eligible for the program. If the department denies eligibility
216 for a completed application package, the notice of denial shall
217 specify the reasons for the denial, including specific and
218 substantive findings of fact, and shall constitute agency action
219 subject to the provisions of chapter 120. For the purposes of
220 ss. 120.569 and 120.57, the real property owner and the owner
221 and operator of a drycleaning facility or wholesale supply
222 facility which is the subject of a decision by the department
223 with regard to eligibility shall be deemed to be parties whose
224 substantial interests are determined by the department's

225 decision to approve or deny eligibility.
226 (n) ~~(m)~~ Eligibility under this subsection applies to the
227 drycleaning facility or wholesale supply facility, and attendant
228 site rehabilitation applies to such facilities and to any place
229 where drycleaning-solvent contamination migrating from the
230 eligible facility is found. A determination of eligibility or
231 ineligibility shall not be affected by any conveyance of the
232 ownership of the drycleaning facility, wholesale supply
233 facility, or the real property on which such facility is
234 located. Nothing contained in this chapter shall be construed to
235 allow a drycleaning facility or wholesale supply facility which
236 would not be eligible under this subsection to become eligible
237 as a result of the conveyance of the ownership of the ineligible
238 drycleaning facility or wholesale supply facility to another
239 owner.
240 (o) ~~(n)~~ If funding for the drycleaning contamination
241 rehabilitation program is eliminated, the provisions of this
242 subsection shall not apply.
243 (p) ~~(o)~~1. The department shall have the authority to cancel
244 the eligibility of any drycleaning facility or wholesale supply
245 facility that submits fraudulent information in the application
246 package or that fails to continuously comply with the conditions
247 of eligibility set forth in this subsection, or has not remitted
248 all fees pursuant to s. 376.303(1)(d), or has not remitted the
249 deductible payments pursuant to paragraph (e).
250 2. If the program eligibility of a drycleaning facility or
251 wholesale supply facility is subject to cancellation pursuant to
252 this section, then the department shall notify the applicant in

253 writing of its intent to cancel program eligibility and shall
254 state the reason or reasons for cancellation. The applicant
255 shall have 45 days to resolve the reason or reasons for
256 cancellation to the satisfaction of the department. If, after 45
257 days, the applicant has not resolved the reason or reasons for
258 cancellation to the satisfaction of the department, the order of
259 cancellation shall become final and shall be subject to the
260 provisions of chapter 120.
261 (q) ~~(p)~~ A real property owner shall not be subject to
262 administrative or judicial action brought by or on behalf of any
263 person or local or state government, or agency thereof, for
264 gross negligence or violations of department rules prior to
265 January 1, 1990, which resulted from the operation of a
266 drycleaning facility, provided that the real property owner
267 demonstrates that:
268 1. The real property owner had ownership in the property
269 at the time of the gross negligence or violation of department
270 rules and did not cause or contribute to contamination on the
271 property;
272 2. The real property owner was a distinct and separate
273 entity from the owner and operator of the drycleaning facility,
274 and did not have an ownership interest in or share in the
275 profits of the drycleaning facility;
276 3. The real property owner did not participate in the
277 operation or management of the drycleaning facility;
278 4. The real property owner complied with all discharge
279 reporting requirements, and did not conceal any contamination;
280 and

281 5. The department has not been denied access.
282
283 The defense provided by this paragraph does not apply to any
284 liability under a federally delegated program.
285 (r) ~~(q)~~ A person whose property becomes contaminated due to
286 geophysical or hydrologic reasons from the operation of a nearby
287 drycleaning or wholesale supply facility and whose property has
288 never been occupied by a business that utilized or stored
289 drycleaning solvents or similar constituents is not subject to
290 administrative or judicial action brought by or on behalf of
291 another to compel the rehabilitation of or the payment of the
292 costs for the rehabilitation of sites contaminated by
293 drycleaning solvents, provided that the person:
294 1. Does not own and has never held an ownership interest
295 in, or shared in the profits of, the drycleaning facility
296 operated at the source location;
297 2. Did not participate in the operation or management of
298 the drycleaning facility at the source location; and
299 3. Did not cause, contribute to, or exacerbate the release
300 or threat of release of any hazardous substance through any act
301 or omission.
302
303 The defense provided by this paragraph does not apply to any
304 liability under a federally delegated program.
305 (s) ~~(r)~~ Nothing in this subsection precludes the department
306 from considering information and documentation provided by
307 private consultants, local government programs, federal
308 agencies, or any individual which is relevant to an eligibility

309 determination if the department provides the applicant with
310 reasonable access to the information and its origin.
311 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1249 Funding for the Management and Restoration of Apalachicola Bay
SPONSOR(S): Kendrick
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Kliner	Kliner
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay. The surcharge is replaced with a $300,000 annual documentary stamp tax distribution to the General Inspection Trust Fund within the Department of Agriculture & Consumer Services (DACS) to be used to fund oyster management and restoration programs in the Bay and other areas of the state.

On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues. The committee substitute substantially amends ss. 201.15 and 370.07, F.S.; and amends ss. 161.091 and 213.05, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues.

Ensure lower taxes. The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Apalachicola Bay Oysters

The oyster fishery in Apalachicola Bay is the most productive of the oyster harvesting areas in Florida, and typically provides 80-90 percent of the statewide oyster harvest. The fishery is managed by the Fish and Wildlife Conservation Commission (FWC) through gear restrictions, daily bag limits, and seasonal closures.[1]
The oyster management and restoration program is managed by the DACS and includes:

- Oyster relaying to move live oysters from polluted areas closed for harvest to cleaner, approved areas where the oysters cleanse themselves and become suitable for harvesting.
- Oyster transplanting to move seed oysters from areas of low growth to more favorable areas.
- Shell planting to deposit oyster shells on the bay bottom to rehabilitate oyster bars or create new ones. The shells provide a hard surface for oyster larvae to settle on and begin to grow.

The waters for harvesting of shellfish are classified as:

- Approved - normally open to harvesting. Red tides, sewage spills, and weather conditions such as hurricanes, may cause the Bay to be closed temporarily.
- Conditionally Approved - closed to harvest periodically because of pollution events such as excessive rain or increased river flow.
- Restricted Area - Open to relaying or controlled purification allowed only by special permit and with supervision. Red tides, sewage spills and weather events may cause the harvest area to be closed.
- Conditionally Restricted Area - Periodic suspension of relay and controlled purification activities based on pollution events.
- Prohibited Area - No harvesting due to actual or potential pollution.

Per Bag Surcharge:

The 1989 Legislature enacted ch. 89-175, Laws of Florida, to establish a 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay. The surcharge was to be paid by the wholesale dealer first receiving, using or selling the oysters after harvest from the Bay. The Department of Revenue was designated as the collection agent and the surcharge was to be transferred quarterly into the Apalachicola Bay Conservation Trust Fund of the Department of Natural Resources (now the Department of Environmental Protection). The funds were to be used by the department to fund oyster management and restoration programs in Apalachicola Bay.

[1] Information relating to the oyster management and restoration program provided by the Department of Agriculture & Consumer Services at http://www.floridaaquaculture.com/SEAS/SEAS_intro.htm

Prior to the transfer of the oyster management and restoration program to the DACS in the 2000 Regular Session, several laws were enacted which affected the oyster management and restoration program:

- Chapter 94-356, Laws of Florida, transferred the program to the newly created Department of Environmental Protection (DEP).
- Chapter 96-321, Laws of Florida, provided that surcharge revenues be deposited into the Marine Resources Conservation Trust Fund at DEP.
- Chapter 99-245, Laws of Florida, transferred the Marine Resources Conservation Trust Fund to the FWC.

In the 2000 Regular Session, the Legislature enacted ch. 2000-197 to transfer responsibility for the oyster management and restoration program to the Division of Aquaculture at the DACS. The Department of Revenue remained the state's collection agent and was directed to transfer surcharge revenues collected to the General Inspection Trust Fund at the DACS. The current oyster management and restoration program covers the Apalachicola Bay and oyster harvesting areas in Dixie, Levy, and Wakulla counties. Additional funding for the program is provided by the DACS.

Since the inception of the surcharge, collection revenues have fluctuated and program costs often exceed revenues collected. The fairness of the surcharge has been questioned by the harvesters who have seen a reduction in the per-bag-payments they receive from the wholesale dealers. Wholesale dealers in the Bay can sell bags of oysters harvested from other areas of the state without collecting or submitting the surcharge which is not assessed for oysters harvested outside of the Bay. In addition, the DACS runs the oyster management and restoration program in areas outside of the Bay, but only the Apalachicola Bay harvesters and dealers pay any of the program costs.

Oyster Surcharge Collection Summary

The FWC is responsible for providing the Department of Revenue with an annual list of oyster wholesale dealers who must have a Saltwater Products License issued by the FWC in order to sell saltwater products to any person, firm, or corporation except directly to the consumer. This list is used by the DOR to collect the per bag surcharge.

In the summer of 2004, the Department of Revenue (DOR) began a compliance enforcement effort to begin collecting overdue surcharge revenues. Registered and potentially unregistered wholesale dealers were notified by certified letter that the DOR was attempting to collect the unpaid surcharge. Second notices were mailed in September 2004. In February 2005, estimated bills totaling approximately $195,000 in uncollected surcharge revenues were sent to 10 wholesale dealers who appeared to owe surcharge monies over the past three years, and in April 2005, estimated bills totaling approximately $82,980 were sent to an additional 7 wholesale dealers who appear to owe surcharges monies over the past three years. The estimated bills also assessed penalties for late payment. The DOR has collected $27,319.66 in the compliance effort - $24,455 of surcharge revenues, $133.73 in penalties, and $2,731.21 in interest.

Active Dealer information	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05 (through 10/04)
Revenue	$69,723	$58,877	$26,723	$38,600	$13,183
# of active dealers	19	19	19	19	25
# of active dealers paying surcharge	10	9	6	14	7

Source: Chart information relating to active dealers provided by the Department of Revenue.

The Apalachicola Bay oyster beds were closed off and on through the summer and fall of 2005 due to damage caused by hurricanes and red tide related health issues. As a result of the closures, the DOR has not been pursuing the compliance enforcement project.

Effect of Proposed Changes

The bill repeals the 50-cents per bag surcharge on oysters harvested from the waters of the Apalachicola Bay which is paid by the wholesale dealer first receiving, using, or selling the oysters, and which is distributed for oyster management and restoration programs in the bay. The surcharge is replaced with a $300,000 annual documentary stamp tax distribution to the General Inspection Trust Fund within the Department of Agriculture & Consumer Services (DACS) to be used to fund oyster management and restoration programs in the Bay.

On the effective date of the act, the Department of Revenue is directed to cease all efforts to collect uncollected surcharge revenues. The committee substitute substantially amends ss. 201.15 and 370.07, F.S.; and amends ss. 161.091 and 213.05, F.S.

C. SECTION DIRECTORY:

Section 1. Amends paragraph (e) of subsection (1), paragraph (a) of subsection 2, and subsection (11) of s. 201.15, F.S. to allow the distribution of documentary stamp tax revenues to the General Inspection Trust Fund in the DACS. This section provides that after annual distribution of documentary stamp tax revenues to the Ecosystem Management and Restoration Trust Fund or the Marine Resources Conservation Trust Fund, $300,000 shall be paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay.

Section 2. Effective July 1, 2007, amends paragraph (e) of subsection (1) of s. 201.15, F.S., as amended by section 26 of ch. 2005-290, Laws of Florida, and paragraph (a) of subsection (2), and subsection (11) of s. 201.15, F.S., as amended by section 1 of ch. 2005-92, Laws of Florida, to allow the distribution of documentary stamp tax revenues to the General Inspection Trust Fund in the DACS. Provides that after the annual distribution of documentary stamp tax revenues to the Ecosystem Management and Restoration Trust Fund or the Marine Resources Conservation Trust Fund, $300,000 shall paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay and other areas of the state. This section removes language from subsection (13) of s. 201.15 F.S. relating to recommendations to the Legislature by the Acquisition and Restoration Council regarding the repeal.

Section 3. Amends subsection (3) of s. 370.07, F.S. to repeal the 50-cents per bag surcharge assessed on each bag of oysters harvested from the waters of the Apalachicola Bay. This section repeals requirements that wholesale dealers certify that the surcharge has been paid or will be paid by the wholesale dealer first receiving the oysters. The section repeals provisions requiring that the Department of Revenue:

- Keep records showing the amount of collected surcharge.
- Transfer surcharge collected into the General Inspection Trust Fund of the DACS on a quarterly basis.
- Adopt emergency rules to implement the surcharge program.
- Promulgate rules to establish audit procedures for wholesale dealers, assess wholesale dealers for delinquency, and prescribe and publish forms to effectuate the collection of the surcharge.

This section further requires that the DACS use documentary stamp tax revenues paid to the credit of the General Inspection Trust Fund to fund oyster management and restoration programs in Apalachicola Bay.

Section 4. Amends paragraph (a) of subsection (1) of section 72.011, F.S., eliminating a statutory cross reference to conform.

Section 5. Amends subsection (3) of s. 161.091, F.S., to conform.

Section 6. Amends s. 213.05, F.S., to delete the responsibility of the Department of Revenue for administering the 50-cents per bag surcharge established in s. 370.07(3), F.S.

Section 7. Amends paragraph (a) of subsection (1) of section 312.053, F.S., eliminating a statutory cross reference to conform.

Section 8. Directs the Department of Revenue to cease all efforts to collect any uncollected surcharge revenues due or payable on the effective date of the act.

Section 9. Provides that the act shall take effect upon becoming a law, except as otherwise provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Inspection Trust Fund (GITF)	FY 06-07	FY 07-08	FY 08-09
Recurring	$300,000	$300,000	$300,000
Estimate collection by Department of Revenue and transferred to DACS GITF			
Eliminated in bill	($ 85,000)	($ 85,000)	($ 85,000)

2. Expenditures:

Current Recurring			
Salaries and benefits (6 FTEs)	$258,781	$258,781	$258,781
OPS	11,664	11,664	11,664
Expenses	28,479	28,479	28,479
Total Recurring	$298,924	$298,924	$298,924

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive private sector impact because of the reduction in costs to oyster harvesters and wholesale dealers who pay the 50-cents per bag surcharge.

D. FISCAL COMMENTS:

The bill provides that $300,000 of documentary stamp tax revenue will be credited to the General Inspection Trust Fund at the DACS. Fiscal information provided by the department indicates that the surcharge generates $85,000 in revenue and that the trust fund provides an additional $214,000 for

program expenses, including salaries and benefits for 6 FTEs. A recurring funding source will provide the Division of Aquaculture with the ability to spend current dollars on other division related responsibilities, such as water quality testing, for which spending authority exists but for which there are insufficient funds.

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:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to funding for the management and
3 restoration of Apalachicola Bay; amending s. 201.15, F.S.;
4 authorizing the distribution of certain revenues from the
5 excise tax on documents to the General Inspection Trust
6 Fund of the Department of Agriculture and Consumer
7 Services; providing for such funds to be used for oyster
8 management and restoration in Apalachicola Bay; amending
9 s. 370.07, F.S.; abolishing a surcharge upon oysters
10 harvested from Apalachicola Bay; deleting certain
11 requirements related to the surcharge; providing for the
12 use of moneys from the General Inspection Trust Fund for
13 oyster management and restoration in Apalachicola Bay;
14 prohibiting the Department of Revenue from collecting
15 uncollected moneys payable from the surcharge; amending
16 ss. 72.011, 161.091, 213.05, and 213.053, F.S., to
17 conform; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Paragraph (e) of subsection (1), paragraph (a)
22 of subsection (2), and subsection (11) of section 201.15,
23 Florida Statutes, are amended to read:
24 201.15 Distribution of taxes collected.--All taxes
25 collected under this chapter shall be distributed as follows and
26 shall be subject to the service charge imposed in s. 215.20(1),
27 except that such service charge shall not be levied against any
28 portion of taxes pledged to debt service on bonds to the extent

29 that the amount of the service charge is required to pay any
30 amounts relating to the bonds:
31 (1) Sixty-two and sixty-three hundredths percent of the
32 remaining taxes collected under this chapter shall be used for
33 the following purposes:
34 (e) The remainder of the moneys distributed under this
35 subsection, after the required payments under paragraphs (a),
36 (b), (c), and (d), shall be paid into the State Treasury to the
37 credit of the General Revenue Fund of the state to be used and
38 expended for the purposes for which the General Revenue Fund was
39 created and exists by law or to the Ecosystem Management and
40 Restoration Trust Fund, ~~or to~~ the Marine Resources Conservation
41 Trust Fund, or the General Inspection Trust Fund as provided in
42 subsection (11).
43 (2) Seven and fifty-six hundredths percent of the
44 remaining taxes collected under this chapter shall be used for
45 the following purposes:
46 (a) Beginning in the month following the final payment for
47 a fiscal year under paragraph (1)(c), available moneys shall be
48 paid into the State Treasury to the credit of the General
49 Revenue Fund of the state to be used and expended for the
50 purposes for which the General Revenue Fund was created and
51 exists by law or to the Ecosystem Management and Restoration
52 Trust Fund, ~~or to~~ the Marine Resources Conservation Trust Fund,
53 or the General Inspection Trust Fund as provided in subsection
54 (11). Payments made under this paragraph shall continue until
55 the cumulative amount credited to the General Revenue Fund for
56 the fiscal year under this paragraph equals the cumulative

57 payments made under paragraph (1)(c) for the same fiscal year.
58 (11)(a) From the moneys specified in paragraphs (1)(e)
59 ~~(1)(d)~~ and (2)(a) and prior to deposit of any moneys into the
60 General Revenue Fund, $30 million shall be paid into the State
61 Treasury to the credit of the Ecosystem Management and
62 Restoration Trust Fund in fiscal year 2000-2001 and each fiscal
63 year thereafter, to be used for the preservation and repair of
64 the state's beaches as provided in ss. 161.091-161.212, and $2
65 million shall be paid into the State Treasury to the credit of
66 the Marine Resources Conservation Trust Fund to be used for
67 marine mammal care as provided in s. 370.0603(3).
68 (b) After the payments required in paragraph (a), $300,000
69 shall be paid into the State Treasury to the credit of the
70 General Inspection Trust Fund in fiscal year 2006-2007 and each
71 fiscal year thereafter, to be used to fund oyster management and
72 restoration programs in Apalachicola Bay as provided in s.
73 370.07(3).
74 Section 2. Effective July 1, 2007, paragraph (e) of
75 subsection (1) and subsections (2), (11), and (13) of section
76 201.15, Florida Statutes, as amended by section 1 of chapter
77 2005-92, Laws of Florida, are amended to read:
78 201.15 Distribution of taxes collected.--All taxes
79 collected under this chapter shall be distributed as follows and
80 shall be subject to the service charge imposed in s. 215.20(1),
81 except that such service charge shall not be levied against any
82 portion of taxes pledged to debt service on bonds to the extent
83 that the amount of the service charge is required to pay any
84 amounts relating to the bonds:

85 (1) Sixty-two and sixty-three hundredths percent of the
86 remaining taxes collected under this chapter shall be used for
87 the following purposes:
88 (e) The remainder of the moneys distributed under this
89 subsection, after the required payments under paragraphs (a),
90 (b), (c), and (d), shall be paid into the State Treasury to the
91 credit of the General Revenue Fund to be used and expended for
92 the purposes for which the General Revenue Fund was created and
93 exists by law or to the Ecosystem Management and Restoration
94 Trust Fund, ~~or to~~ the Marine Resources Conservation Trust Fund,
95 or the General Inspection Trust Fund as provided in subsection
96 (11).
97 (2) The lesser of seven and fifty-six hundredths percent
98 of the remaining taxes collected under this chapter or $85.1
99 ~~$84.9~~ million in each fiscal year shall be used for the
100 following purposes:
101 (a) Beginning in the month following the final payment for
102 a fiscal year under paragraph (1)(c), available moneys shall be
103 paid into the State Treasury to the credit of the General
104 Revenue Fund to be used and expended for the purposes for which
105 the General Revenue Fund was created and exists by law or to the
106 Ecosystem Management and Restoration Trust Fund, ~~or to~~ the
107 Marine Resources Conservation Trust Fund, or the General
108 Inspection Trust Fund as provided in subsection (11). Payments
109 made under this paragraph shall continue until the cumulative
110 amount credited to the General Revenue Fund for the fiscal year
111 under this paragraph equals the cumulative payments made under
112 paragraph (1)(c) for the same fiscal year.

113 (b) The remainder of the moneys distributed under this
114 subsection shall be paid into the State Treasury to the credit
115 of the Land Acquisition Trust Fund. Sums deposited in the fund
116 pursuant to this subsection may be used for any purpose for
117 which funds deposited in the Land Acquisition Trust Fund may
118 lawfully be used.
119 (11)(a) From the moneys specified in paragraphs (1)(e)
120 ~~(1)(d)~~ and (2)(a) and prior to deposit of any moneys into the
121 General Revenue Fund, $30 million shall be paid into the State
122 Treasury to the credit of the Ecosystem Management and
123 Restoration Trust Fund in fiscal year 2000-2001 and each fiscal
124 year thereafter, to be used for the preservation and repair of
125 the state's beaches as provided in ss. 161.091-161.212, and $2
126 million shall be paid into the State Treasury to the credit of
127 the Marine Resources Conservation Trust Fund to be used for
128 marine mammal care as provided in s. 370.0603(3).
129 (b) After the payments required in paragraph (a), $300,000
130 shall be paid into the State Treasury to the credit of the
131 General Inspection Trust Fund in fiscal year 2006-2007 and each
132 fiscal year thereafter, to be used to fund oyster management and
133 restoration programs in Apalachicola Bay as provided in s.
134 370.07(3).
135 (13) The distribution of proceeds deposited into the Water
136 Management Lands Trust Fund and the Conservation and Recreation
137 Lands Trust Fund, pursuant to subsections (4) and (5), shall not
138 be used for land acquisition, but may be used for preacquisition
139 costs associated with land purchases. The Legislature intends
140 that the Florida Forever program supplant the acquisition

141 programs formerly authorized under ss. 259.032 and 373.59. ~~Prior~~
142 ~~to the 2005 Regular Session of the Legislature, the Acquisition~~
143 ~~and Restoration Council shall review and make recommendations to~~
144 ~~the Legislature concerning the need to repeal this provision.~~
145 ~~Based on these recommendations, the Legislature shall review the~~
146 ~~need to repeal this provision during the 2005 Regular Session.~~
147 Section 3. Subsection (3) of section 370.07, Florida
148 Statutes, is amended to read:
149 370.07 Wholesale and retail saltwater products dealers;
150 regulation.--
151 (3) APALACHICOLA BAY OYSTER MANAGEMENT AND RESTORATION
152 PROGRAM ~~SURCHARGE~~.--
153 ~~(a) For purposes of this section, "bag" means an amount of~~
154 ~~oysters with shells weighing approximately 60 pounds.~~
155 ~~(b) Effective October 1, 1989, there shall be assessed a~~
156 ~~surcharge of 50 cents on each bag of oysters to be paid by the~~
157 ~~wholesale dealer first receiving, using, or selling the oysters~~
158 ~~after harvesting from the waters of Apalachicola Bay.~~
159 ~~(c)1. Each wholesale dealer shall certify, on such forms~~
160 ~~as may be prescribed by the Department of Revenue, to any~~
161 ~~subsequent purchasing wholesale dealer or other purchaser that~~
162 ~~the surcharge imposed by this subsection has been paid or will~~
163 ~~be paid by such wholesale dealer first receiving the oysters.~~
164 ~~2. In the case where the harvester is also the wholesale~~
165 ~~dealer, such wholesale dealer shall maintain documentation, on~~
166 ~~forms as may be prescribed by the Department of Revenue,~~
167 ~~adequate to establish that the surcharge has been paid or will~~
168 ~~be paid by such wholesale dealer.~~

169 ~~3. In such case where the wholesale dealer is also the~~
170 ~~retail dealer under paragraph (1)(b), such wholesale dealer~~
171 ~~shall maintain documentation, on forms as may be prescribed by~~
172 ~~the Department of Revenue, adequate to establish that the~~
173 ~~surcharge has been paid or will be paid by such wholesale~~
174 ~~dealer.~~
175 ~~(d) Except for the collection allowance pursuant to s.~~
176 ~~212.12 and estimated tax filing requirements pursuant to s.~~
177 ~~212.11, the same duties and privileges imposed by chapter 212~~
178 ~~upon dealers of tangible personal property respecting the~~
179 ~~remission of the surcharge, the making of returns, penalties and~~
180 ~~interest, the keeping of books, records and accounts, and the~~
181 ~~compliance with the rules of the Department of Revenue in the~~
182 ~~administration of chapter 212 shall apply and be binding upon~~
183 ~~all wholesale dealers who are subject to the surcharge imposed~~
184 ~~by this subsection.~~
185 ~~(e) The Department of Revenue shall keep records showing~~
186 ~~the amount of the surcharge collected.~~
187 ~~(f) The Department of Revenue shall collect the surcharge~~
188 ~~for transfer into the General Inspection Trust Fund of the~~
189 ~~Department of Agriculture and Consumer Services.~~
190 ~~(g) The Department of Revenue is empowered to promulgate~~
191 ~~rules, establish audit procedures for the audit of wholesale~~
192 ~~dealers, assess for delinquency, and prescribe and publish such~~
193 ~~forms as may be necessary to effectuate the provisions of this~~
194 ~~subsection.~~
195 ~~(h) Annually, the Department of Agriculture and Consumer~~
196 ~~Services and the Fish and Wildlife Conservation Commission shall~~

197 ~~furnish the Department of Revenue with a current list of~~
198 ~~wholesale dealers in the state.~~
199 ~~(i) Collections received by the Department of Revenue from~~
200 ~~the surcharge shall be transferred quarterly to the General~~
201 ~~Inspection Trust Fund of the Department of Agriculture and~~
202 ~~Consumer Services, less the costs of administration.~~
203 ~~(j) The executive director of the Department of Revenue is~~
204 ~~hereby authorized to adopt emergency rules pursuant to s.~~
205 ~~120.54(4) for purposes of implementing this subsection.~~
206 ~~Notwithstanding any other provisions of law, such emergency~~
207 ~~rules shall remain effective for 6 months from the date of~~
208 ~~adoption. Other rules of the Department of Revenue related to~~
209 ~~and in furtherance of the orderly implementation of this~~
210 ~~subsection shall not be subject to a s. 120.56(2) rule challenge~~
211 ~~or a s. 120.54(3)(e)2. drawout proceeding but, once adopted,~~
212 ~~shall be subject to a s. 120.56(3) invalidity challenge. Such~~
213 ~~rules shall be adopted by the Governor and Cabinet and shall~~
214 ~~become effective upon filing with the Department of State,~~
215 ~~notwithstanding the provisions of s. 120.54(3)(e)6.~~
216 ~~(k)~~ The Department of Agriculture and Consumer Services
217 shall use or distribute funds paid into the State Treasury to
218 the credit of the General Inspection Trust Fund pursuant to s.
219 201.15(11) ~~generated by this surcharge~~, less reasonable costs of
220 ~~collection and~~ administration, to fund the following oyster
221 management and restoration programs in Apalachicola Bay:
222 (a)~~1.~~ The relaying and transplanting of live oysters.
223 (b)~~2.~~ Shell planting to construct or rehabilitate oyster
224 bars.

225 (c)~~3.~~ Education programs for licensed oyster harvesters on
226 oyster biology, aquaculture, boating and water safety,
227 sanitation, resource conservation, small business management,
228 and other relevant subjects.
229 (d)~~4.~~ Research directed toward the enhancement of oyster
230 production in the bay and the water management needs of the bay.
231 Section 4. Paragraph (a) of subsection (1) of section
232 72.011, Florida Statutes, is amended to read:
233 72.011 Jurisdiction of circuit courts in specific tax
234 matters; administrative hearings and appeals; time for
235 commencing action; parties; deposits.--
236 (1)(a) A taxpayer may contest the legality of any
237 assessment or denial of refund of tax, fee, surcharge, permit,
238 interest, or penalty provided for under s. 125.0104, s.
239 125.0108, chapter 198, chapter 199, chapter 201, chapter 202,
240 chapter 203, chapter 206, chapter 207, chapter 210, chapter 211,
241 chapter 212, chapter 213, chapter 220, chapter 221, ~~s.~~
242 ~~370.07(3),~~ chapter 376, s. 403.717, s. 403.718, s. 403.7185, s.
243 538.09, s. 538.25, chapter 550, chapter 561, chapter 562,
244 chapter 563, chapter 564, chapter 565, chapter 624, or s.
245 681.117 by filing an action in circuit court; or, alternatively,
246 the taxpayer may file a petition under the applicable provisions
247 of chapter 120. However, once an action has been initiated under
248 s. 120.56, s. 120.565, s. 120.569, s. 120.57, or s.
249 120.80(14)(b), no action relating to the same subject matter may
250 be filed by the taxpayer in circuit court, and judicial review
251 shall be exclusively limited to appellate review pursuant to s.
252 120.68; and once an action has been initiated in circuit court,

253 no action may be brought under chapter 120.
254 Section 5. Subsection (3) of section 161.091, Florida
255 Statutes, is amended to read:
256 161.091 Beach management; funding; repair and maintenance
257 strategy.--
258 (3) In accordance with the intent expressed in s. 161.088
259 and the legislative finding that erosion of the beaches of this
260 state is detrimental to tourism, the state's major industry,
261 further exposes the state's highly developed coastline to severe
262 storm damage, and threatens beach-related jobs, which, if not
263 stopped, could significantly reduce state sales tax revenues,
264 funds deposited into the State Treasury to the credit of the
265 Ecosystem Management and Restoration Trust Fund, in the annual
266 amounts provided in s. 201.15(11)(a) ~~s. 201.15(11)~~, shall be
267 used, for a period of not less than 15 years, to fund the
268 development, implementation, and administration of the state's
269 beach management plan, as provided in ss. 161.091-161.212, prior
270 to the use of such funds deposited pursuant to s. 201.15(11)(a)
271 ~~s. 201.15(11)~~ in that trust fund for any other purpose.
272 Section 6. Section 213.05, Florida Statutes, is amended to
273 read:
274 213.05 Department of Revenue; control and administration
275 of revenue laws.--The Department of Revenue shall have only
276 those responsibilities for ad valorem taxation specified to the
277 department in chapter 192, taxation, general provisions; chapter
278 193, assessments; chapter 194, administrative and judicial
279 review of property taxes; chapter 195, property assessment
280 administration and finance; chapter 196, exemption; chapter 197,

281 tax collections, sales, and liens; chapter 199, intangible
282 personal property taxes; and chapter 200, determination of
283 millage. The Department of Revenue shall have the responsibility
284 of regulating, controlling, and administering all revenue laws
285 and performing all duties as provided in s. 125.0104, the Local
286 Option Tourist Development Act; s. 125.0108, tourist impact tax;
287 chapter 198, estate taxes; chapter 201, excise tax on documents;
288 chapter 202, communications services tax; chapter 203, gross
289 receipts taxes; chapter 206, motor and other fuel taxes; chapter
290 211, tax on production of oil and gas and severance of solid
291 minerals; chapter 212, tax on sales, use, and other
292 transactions; chapter 220, income tax code; chapter 221,
293 emergency excise tax; ss. 336.021 and 336.025, taxes on motor
294 fuel and special fuel; ~~s. 370.07(3), Apalachicola Bay oyster~~
295 ~~surcharge;~~ s. 376.11, pollutant spill prevention and control; s.
296 403.718, waste tire fees; s. 403.7185, lead-acid battery fees;
297 s. 538.09, registration of secondhand dealers; s. 538.25,
298 registration of secondary metals recyclers; s. 624.4621, group
299 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;
300 s. 624.475, commercial self-insurance fund premium tax; ss.
301 624.509-624.511, insurance code: administration and general
302 provisions; s. 624.515, State Fire Marshal regulatory
303 assessment; s. 627.357, medical malpractice self-insurance
304 premium tax; s. 629.5011, reciprocal insurers premium tax; and
305 s. 681.117, motor vehicle warranty enforcement.
306 Section 7. Paragraph (a) of subsection (1) of section
307 213.053, Florida Statutes, is amended to read:
308 213.053 Confidentiality and information sharing.--

309 (1)(a) The provisions of this section apply to s.
310 125.0104, county government; s. 125.0108, tourist impact tax;
311 chapter 175, municipal firefighters' pension trust funds;
312 chapter 185, municipal police officers' retirement trust funds;
313 chapter 198, estate taxes; chapter 199, intangible personal
314 property taxes; chapter 201, excise tax on documents; chapter
315 203, gross receipts taxes; chapter 211, tax on severance and
316 production of minerals; chapter 212, tax on sales, use, and
317 other transactions; chapter 220, income tax code; chapter 221,
318 emergency excise tax; s. 252.372, emergency management,
319 preparedness, and assistance surcharge; ~~s. 370.07(3),~~
320 ~~Apalachicola Bay oyster surcharge;~~ chapter 376, pollutant spill
321 prevention and control; s. 403.718, waste tire fees; s.
322 403.7185, lead-acid battery fees; s. 538.09, registration of
323 secondhand dealers; s. 538.25, registration of secondary metals
324 recyclers; ss. 624.501 and 624.509-624.515, insurance code; s.
325 681.117, motor vehicle warranty enforcement; and s. 896.102,
326 reports of financial transactions in trade or business.
327 Section 8. On the effective date of this act, the
328 Department of Revenue shall cease all efforts to collect any
329 uncollected revenues due or payable pursuant to the 50-cent-per-
330 bag surcharge that is abolished by this act.
331 Section 9. Except as otherwise expressly provided in this
332 act, this act shall take effect upon becoming a law.

Amendment No. (for drafter's use only)

Bill No. **1249**

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: Environmental Regulation
2 Committee
3 Representative Kendrick offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Paragraph (e) of subsection (1), paragraph (a)
8 of subsection (2), and subsection (11) of section 201.15,
9 Florida Statutes, are amended to read:
10 201.15 Distribution of taxes collected.--All taxes
11 collected under this chapter shall be distributed as follows and
12 shall be subject to the service charge imposed in s. 215.20(1),
13 except that such service charge shall not be levied against any
14 portion of taxes pledged to debt service on bonds to the extent
15 that the amount of the service charge is required to pay any
16 amounts relating to the bonds:
17 (1) Sixty-two and sixty-three hundredths percent of the
18 remaining taxes collected under this chapter shall be used for
19 the following purposes:
20 (e) The remainder of the moneys distributed under this
21 subsection, after the required payments under paragraphs (a),
22 (b), (c), and (d), shall be paid into the State Treasury to the

23 credit of the General Revenue Fund of the state to be used and
24 expended for the purposes for which the General Revenue Fund was
25 created and exists by law or to the Ecosystem Management and
26 Restoration Trust Fund, ~~or to~~ the Marine Resources Conservation
27 Trust Fund, or the General Inspection Trust Fund as provided in
28 subsection (11).
29 (2) Seven and fifty-six hundredths percent of the
30 remaining taxes collected under this chapter shall be used for
31 the following purposes:
32 (a) Beginning in the month following the final payment for
33 a fiscal year under paragraph (1)(c), available moneys shall be
34 paid into the State Treasury to the credit of the General
35 Revenue Fund of the state to be used and expended for the
36 purposes for which the General Revenue Fund was created and
37 exists by law or to the Ecosystem Management and Restoration
38 Trust Fund, ~~or to~~ the Marine Resources Conservation Trust Fund,
39 or the General Inspection Trust Fund as provided in subsection
40 (11). Payments made under this paragraph shall continue until
41 the cumulative amount credited to the General Revenue Fund for
42 the fiscal year under this paragraph equals the cumulative
43 payments made under paragraph (1)(c) for the same fiscal year.
44 (11)(a) From the moneys specified in paragraphs (1)(e)
45 ~~(1)(d)~~ and (2)(a) and prior to deposit of any moneys into the
46 General Revenue Fund, $30 million shall be paid into the State
47 Treasury to the credit of the Ecosystem Management and
48 Restoration Trust Fund in fiscal year 2000-2001 and each fiscal
49 year thereafter, to be used for the preservation and repair of
50 the state's beaches as provided in ss. 161.091-161.212, and $2
51 million shall be paid into the State Treasury to the credit of
52 the Marine Resources Conservation Trust Fund to be used for
53 marine mammal care as provided in s. 370.0603(3).

54 (b) After the payments required in paragraph (a), $300,000
55 shall be paid into the State Treasury to the credit of the
56 General Inspection Trust Fund in fiscal year 2006-2007 and each
57 fiscal year thereafter, to be used to fund oyster management and
58 restoration programs as provided in s. 370.07(3).
59 Section 2. Effective July 1, 2007, paragraph (e) of
60 subsection (1) of section 201.15, Florida Statutes, as amended
61 by section 26 of chapter 2005-290, Laws of Florida, and
62 subsections (2), (11), and (13) of section 201.15, Florida
63 Statutes, as amended by section 1 of chapter 2005-92, Laws of
64 Florida, are amended to read:
65 201.15 Distribution of taxes collected.--All taxes
66 collected under this chapter shall be distributed as follows and
67 shall be subject to the service charge imposed in s. 215.20(1),
68 except that such service charge shall not be levied against any
69 portion of taxes pledged to debt service on bonds to the extent
70 that the amount of the service charge is required to pay any
71 amounts relating to the bonds:
72 (1) Sixty-two and sixty-three hundredths percent of the
73 remaining taxes collected under this chapter shall be used for
74 the following purposes:
75 (e) The remainder of the moneys distributed under this
76 subsection, after the required payments under paragraphs (a),
77 (b), (c), and (d) shall be paid into the State Treasury to the
78 credit of the General Revenue Fund to be used and expended for
79 the purposes for which the General Revenue Fund was created and
80 exists by law or to the Ecosystem Management and Restoration
81 Trust Fund, ~~or to~~ the Marine Resources Conservation Trust Fund,
82 or the General Inspection Trust Fund as provided in subsection
83 (11).

84 (2) The lesser of seven and fifty-six hundredths percent
85 of the remaining taxes collected under this chapter or $85.1
86 ~~$84.9~~ million in each fiscal year shall be used for the
87 following purposes:
88 (a) Beginning in the month following the final payment for
89 a fiscal year under paragraph (1)(c), available moneys shall be
90 paid into the State Treasury to the credit of the General
91 Revenue Fund to be used and expended for the purposes for which
92 the General Revenue Fund was created and exists by law or to the
93 Ecosystem Management and Restoration Trust Fund, ~~or to~~ the
94 Marine Resources Conservation Trust Fund, or the General
95 Inspection Trust Fund as provided in subsection (11). Payments
96 made under this paragraph shall continue until the cumulative
97 amount credited to the General Revenue Fund for the fiscal year
98 under this paragraph equals the cumulative payments made under
99 paragraph (1)(c) for the same fiscal year.
100 (b) The remainder of the moneys distributed under this
101 subsection shall be paid into the State Treasury to the credit
102 of the Land Acquisition Trust Fund. Sums deposited in the fund
103 pursuant to this subsection may be used for any purpose for
104 which funds deposited in the Land Acquisition Trust Fund may
105 lawfully be used.
106 (11)(a) From the moneys specified in paragraphs (1)(e)
107 ~~(1)(d)~~ and (2)(a) and prior to deposit of any moneys into the
108 General Revenue Fund, $30 million shall be paid into the State
109 Treasury to the credit of the Ecosystem Management and
110 Restoration Trust Fund in fiscal year 2000-2001 and each fiscal
111 year thereafter, to be used for the preservation and repair of
112 the state's beaches as provided in ss. 161.091-161.212, and $2
113 million shall be paid into the State Treasury to the credit of

114 the Marine Resources Conservation Trust Fund to be used for
115 marine mammal care as provided in s. 370.0603(3).
116 (b) After the payments required in paragraph (a), $300,000
117 shall be paid into the State Treasury to the credit of the
118 General Inspection Trust Fund in fiscal year 2006-2007 and each
119 fiscal year thereafter, to be used to fund oyster management and
120 restoration programs as provided in s. 370.07(3).
121 (13) The distribution of proceeds deposited into the Water
122 Management Lands Trust Fund and the Conservation and Recreation
123 Lands Trust Fund, pursuant to subsections (4) and (5), shall not
124 be used for land acquisition, but may be used for preacquisition
125 costs associated with land purchases. The Legislature intends
126 that the Florida Forever program supplant the acquisition
127 programs formerly authorized under ss. 259.032 and 373.59. ~~Prior~~
128 ~~to the 2005 Regular Session of the Legislature, the Acquisition~~
129 ~~and Restoration Council shall review and make recommendations to~~
130 ~~the Legislature concerning the need to repeal this provision.~~
131 ~~Based on these recommendations, the Legislature shall review the~~
132 ~~need to repeal this provision during the 2005 Regular Session.~~
133 Section 3. Subsection (3) of section 370.07, Florida
134 Statutes, is amended to read:
135 370.07 Wholesale and retail saltwater products dealers;
136 regulation.--
137 (3) OYSTER MANAGEMENT AND RESTORATION PROGRAMS
138 ~~APALACHICOLA BAY OYSTER SURCHARGE~~.--
139 ~~(a) For purposes of this section, "bag" means an amount of~~
140 ~~oysters with shells weighing approximately 60 pounds.~~
141 ~~(b) Effective October 1, 1989, there shall be assessed a~~
142 ~~surcharge of 50 cents on each bag of oysters to be paid by the~~
143 ~~wholesale dealer first receiving, using, or selling the oysters~~
144 ~~after harvesting from the waters of Apalachicola Bay.~~

145 ~~(c)1. Each wholesale dealer shall certify, on such forms~~
146 ~~as may be prescribed by the Department of Revenue, to any~~
147 ~~subsequent purchasing wholesale dealer or other purchaser that~~
148 ~~the surcharge imposed by this subsection has been paid or will~~
149 ~~be paid by such wholesale dealer first receiving the oysters.~~
150 ~~2. In the case where the harvester is also the wholesale~~
151 ~~dealer, such wholesale dealer shall maintain documentation, on~~
152 ~~forms as may be prescribed by the Department of Revenue,~~
153 ~~adequate to establish that the surcharge has been paid or will~~
154 ~~be paid by such wholesale dealer.~~
155 ~~3. In such case where the wholesale dealer is also the~~
156 ~~retail dealer under paragraph (1)(b), such wholesale dealer~~
157 ~~shall maintain documentation, on forms as may be prescribed by~~
158 ~~the Department of Revenue, adequate to establish that the~~
159 ~~surcharge has been paid or will be paid by such wholesale~~
160 ~~dealer.~~
161 ~~(d) Except for the collection allowance pursuant to s.~~
162 ~~212.12 and estimated tax filing requirements pursuant to s.~~
163 ~~212.11, the same duties and privileges imposed by chapter 212~~
164 ~~upon dealers of tangible personal property respecting the~~
165 ~~remission of the surcharge, the making of returns, penalties and~~
166 ~~interest, the keeping of books, records and accounts, and the~~
167 ~~compliance with the rules of the Department of Revenue in the~~
168 ~~administration of chapter 212 shall apply and be binding upon~~
169 ~~all wholesale dealers who are subject to the surcharge imposed~~
170 ~~by this subsection.~~
171 ~~(e) The Department of Revenue shall keep records showing~~
172 ~~the amount of the surcharge collected.~~
173 ~~(f) The Department of Revenue shall collect the surcharge~~
174 ~~for transfer into the General Inspection Trust Fund of the~~
175 ~~Department of Agriculture and Consumer Services.~~

176 ~~(g) The Department of Revenue is empowered to promulgate~~
177 ~~rules, establish audit procedures for the audit of wholesale~~
178 ~~dealers, assess for delinquency, and prescribe and publish such~~
179 ~~forms as may be necessary to effectuate the provisions of this~~
180 ~~subsection.~~
181 ~~(h) Annually, the Department of Agriculture and Consumer~~
182 ~~Services and the Fish and Wildlife Conservation Commission shall~~
183 ~~furnish the Department of Revenue with a current list of~~
184 ~~wholesale dealers in the state.~~
185 ~~(i) Collections received by the Department of Revenue from~~
186 ~~the surcharge shall be transferred quarterly to the General~~
187 ~~Inspection Trust Fund of the Department of Agriculture and~~
188 ~~Consumer Services, less the costs of administration.~~
189 ~~(j) The executive director of the Department of Revenue is~~
190 ~~hereby authorized to adopt emergency rules pursuant to s.~~
191 ~~120.54(4) for purposes of implementing this subsection.~~
192 ~~Notwithstanding any other provisions of law, such emergency~~
193 ~~rules shall remain effective for 6 months from the date of~~
194 ~~adoption. Other rules of the Department of Revenue related to~~
195 ~~and in furtherance of the orderly implementation of this~~
196 ~~subsection shall not be subject to a s. 120.56(2) rule challenge~~
197 ~~or a s. 120.54(3)(c)2. drawout proceeding but, once adopted,~~
198 ~~shall be subject to a s. 120.56(3) invalidity challenge. Such~~
199 ~~rules shall be adopted by the Governor and Cabinet and shall~~
200 ~~become effective upon filing with the Department of State,~~
201 ~~notwithstanding the provisions of s. 120.54(3)(c)6.~~
202 ~~(k)~~ The Department of Agriculture and Consumer Services
203 shall use or distribute funds paid into the State Treasury to
204 the credit of the General Inspection Trust Fund pursuant to s.
205 201.15(11) ~~generated by this surcharge~~, less reasonable costs of
206 ~~collection and~~ administration, to fund the following oyster

207 management and restoration programs in Apalachicola Bay and
208 other oyster harvest areas in the state:
209 (a) ~~1.~~ The relaying and transplanting of live oysters.
210 (b) ~~2.~~ Shell planting to construct or rehabilitate oyster
211 bars.
212 (c) ~~3.~~ Education programs for licensed oyster harvesters on
213 oyster biology, aquaculture, boating and water safety,
214 sanitation, resource conservation, small business management,
215 and other relevant subjects.
216 (d) ~~4.~~ Research directed toward the enhancement of oyster
217 production in the bay and the water management needs of the bay.
218 Section 4. Subsection (3) of section 161.091, Florida
219 Statutes, is amended to read:
220 161.091 Beach management; funding; repair and maintenance
221 strategy.--
222 (3) In accordance with the intent expressed in s. 161.088
223 and the legislative finding that erosion of the beaches of this
224 state is detrimental to tourism, the state's major industry,
225 further exposes the state's highly developed coastline to severe
226 storm damage, and threatens beach-related jobs, which, if not
227 stopped, could significantly reduce state sales tax revenues,
228 funds deposited into the State Treasury to the credit of the
229 Ecosystem Management and Restoration Trust Fund, in the annual
230 amounts provided in s. 201.15(11)(a) ~~s. 201.15(11)~~, shall be
231 used, for a period of not less than 15 years, to fund the
232 development, implementation, and administration of the state's
233 beach management plan, as provided in ss. 161.091-161.212, prior
234 to the use of such funds deposited pursuant to s. 201.15(11)(a)
235 ~~s. 201.15(11)~~ in that trust fund for any other purpose.
236 Section 5. Section 213.05, Florida Statutes, is amended to
237 read:

238 213.05 Department of Revenue; control and administration
239 of revenue laws.--The Department of Revenue shall have only
240 those responsibilities for ad valorem taxation specified to the
241 department in chapter 192, taxation, general provisions; chapter
242 193, assessments; chapter 194, administrative and judicial
243 review of property taxes; chapter 195, property assessment
244 administration and finance; chapter 196, exemption; chapter 197,
245 tax collections, sales, and liens; chapter 199, intangible
246 personal property taxes; and chapter 200, determination of
247 millage. The Department of Revenue shall have the responsibility
248 of regulating, controlling, and administering all revenue laws
249 and performing all duties as provided in s. 125.0104, the Local
250 Option Tourist Development Act; s. 125.0108, tourist impact tax;
251 chapter 198, estate taxes; chapter 201, excise tax on documents;
252 chapter 202, communications services tax; chapter 203, gross
253 receipts taxes; chapter 206, motor and other fuel taxes; chapter
254 211, tax on production of oil and gas and severance of solid
255 minerals; chapter 212, tax on sales, use, and other
256 transactions; chapter 220, income tax code; chapter 221,
257 emergency excise tax; ss. 336.021 and 336.025, taxes on motor
258 fuel and special fuel; ~~s. 370.07(3), Apalachicola Bay oyster~~
259 ~~surcharge;~~ s. 376.11, pollutant spill prevention and control; s.
260 403.718, waste tire fees; s. 403.7185, lead-acid battery fees;
261 s. 538.09, registration of secondhand dealers; s. 538.25,
262 registration of secondary metals recyclers; s. 624.4621, group
263 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;
264 s. 624.475, commercial self-insurance fund premium tax; ss.
265 624.509-624.511, insurance code: administration and general
266 provisions; s. 624.515, State Fire Marshal regulatory
267 assessment; s. 627.357, medical malpractice self-insurance

268 premium tax; s. 629.5011, reciprocal insurers premium tax; and
269 s. 681.117, motor vehicle warranty enforcement.
270 Section 6. On the effective date of this act, the
271 Department of Revenue shall cease all efforts to collect any
272 uncollected revenues due or payable pursuant to the 50-cent-per-
273 bag surcharge that is abolished by this act.
274 Section 7. Except as otherwise expressly provided in this
275 act, this act shall take effect upon becoming a law.
276 ========== T I T L E A M E N D M E N T ==========
277 Remove the entire title and insert:
278 A bill to be entitled
279 An act relating to funding for oyster management and
280 restoration programs in Apalachicola Bay and other areas;
281 amending s. 201.15, F.S.; increasing the distribution of
282 certain revenues from the excise tax on documents;
283 authorizing the distribution of such revenues to the
284 General Inspection Trust Fund of the Department of
285 Agriculture and Consumer Services; providing for such
286 funds to be used for oyster management and restoration
287 programs in Apalachicola Bay and other areas; amending s.
288 370.07, F.S.; abolishing a surcharge upon oysters
289 harvested from Apalachicola Bay; deleting certain
290 requirements related to the surcharge; providing for the
291 use of moneys from the General Inspection Trust Fund for
292 oyster management and restoration programs in Apalachicola
293 Bay and other areas; prohibiting the Department of Revenue
294 from collecting uncollected moneys payable from the
295 surcharge; amending ss. 161.091 and 213.05, F.S., to
296 conform; providing effective dates.
297

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENVR 06-04 Dept. of Interior Constitutional Amendment
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee		Kliner	Kliner
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of the Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources, including fish and wildlife. If approved:

- Effective July 1, 2009 the constitutional mandate establishing the Florida Fish and Wildlife Conservation Commission and its duties would be removed.
- Effective on that date, the Department of the Interior shall be established, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to fish and wildlife, natural resources, and the scenic beauty of the state.
- The office of commissioner of the interior shall take effect January 6, 2009.
- The office would be initially filled for a 2-year term at the 2008 general election, with 4-year terms following thereafter.

The Department shall be responsible, as provided by law, for conserving and protecting the natural resources and scenic beauty of the state in accordance with Article II, section 7(a) of the State Constitution, including fish and wildlife.

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The proposed constitutional amendment does not appear to implicate any of the House Principles; however, if the constitutional amendment passes the Legislature will be charged to establish an agency to oversee issues relating to fish and wildlife, natural resources, and the scenic beauty of the state. Depending on how the Legislature structures the agency, this measure may decrease public employment by possibly eliminating duplicative services or combining certain disciplines relating to natural resource conservation and management.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, two governmental entities exercise primary supervision over matters pertaining to Florida's natural resources. [1]

- The Department of Environmental Protection (DEP) is an executive agency overseen by a governor-appointed Secretary. The DEP is primarily responsible for managing and regulating activities that impact Florida's land, air and water quality.
- The Florida Fish and Wildlife Conservation Commission (FWC) is a constitutionally-created body managed by a Commission of seven members that are appointed by the Governor and confirmed by the Florida Senate to five-year terms. The FWC is responsible for managing and regulating activities that impact Florida's marine and freshwater animals and terrestrial wildlife.

Both agencies perform functions relating to land management, construction permitting, pollution control, and law enforcement. In addition, both FWC and DEP have land acquisition programs and each develops recreational trails.

Short History of Conservation in Florida

Between 1845 and 1889 the enforcement responsibility for fishing and conservation fell to each of the individual counties, towns or municipalities. The Florida Fish Commission was established in 1889, and Fish Wardens were appointed by state commissioners to enforce Florida fish laws. Between 1905 and 1913 enforcement was returned to the individual counties. During that time, Fish and Game Wardens were authorized for appointment for each county, enforced ordinances relating to fish, oyster and game, and were compensated by the county government.

The Shell Fish Commission supervised the fishing industry beginning in 1913 and established the first seafood enforcement office in Florida, placed under the Agriculture Commissioner. The enforcement arm of the Commission started with 4 patrol boats and 14 sworn officers, one from each of the major fishing centers in Florida at that time.

In 1933 the Florida Board of Conservation (FBC) combined and replaced the Shellfish Commission, the Game and Freshwater Fish Department, and the State Geological Survey. Two years later the Game and Freshwater Fish Department was removed from the FBC. At that time the FBC was comprised of the Governor, the State Supervisor of Conservation, the Secretary of State, the Attorney General, the State Comptroller, the State Treasurer, the State Superintendent of Public Instruction, and the Commissioner of Agriculture.

[1] The Department of Agriculture and Consumer Services, which is administered by an elected Cabinet officer oversees the state's agricultural resources.

In 1952 Florida Governor Fuller Warren proposed a new Department of the Interior made up of the Game and Fresh Water Fish Commission and the State Board Conservation. In 1953, newly elected Governor Daniel McCarty decided to merge the Game and Fresh Water Fish Commission with the State Board of Conservation to form a Department of Interior headed by a an elected cabinet official.[2] This was a continuation of the work Governor McCarty's predecessor Governor Fuller Warren started in 1952, when the members of the Legislature felt that the Commission was "superior" to the Senate and House because its regulations had the power of law with legislative approval or the governor's signature.[3] However, the work that Governor Warren had started and Governor McCarty was continuing never came to pass due to Governor McCarty's death less than nine months after taking office prevented implementation of this plan.[4]

In July, 1969 the FBC became Department of Natural Resources (DNR), which consisted of six Divisions: Administrative Services, Recreation and Parks, Interior Resources, Environmental Research and Protection, Marine Resources, and the Game and Fresh Water Fish Commission. The Game and Freshwater Fish Commission was excised as separate agency Sept 1969 by court order.

Department of Environmental Regulation (DER) was created in 1975. While DNR primarily concentrated on issues relating to the acquisition and management of state lands (submerged lands and uplands), DER had the regulatory authority to control the discharge of pollutants to the environment and the destruction of wetlands by dredging and filling.

In 1992 the Department of Environmental Protection (DEP) was established from the merger of the Departments of Natural Resources and Environmental Regulation.

On November 3, 1998, Revision 5 to the Florida Constitution amended Article IV, Section 9 and created Article XII, Section 23 (1998 Revision) for the purpose of creating the FWC. The move consolidated the regulation of wild animal life, freshwater aquatic life, and marine life in one agency. In doing so, the Game Commission and Marine Commission were abolished and the jurisdiction of both entities was transferred to the FWC.

Prior to 1999, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three governmental entities:

1) The Florida Game and Fresh Water Fish Commission (Game Commission), a constitutional entity with exclusive regulatory and executive authority over wild animal life and freshwater aquatic life.
2) The Marine Fisheries Commission (Marine Commission), a statutory entity placed within the DEP with limited jurisdiction over the management of marine life.
3) The DEP, a statutory agency with authority over some aspects of marine life and full authority over marine law enforcement.

C. SECTION DIRECTORY:

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources. Upon voter approval it would leave the regulation of natural resources to be determined by the Legislature. The constitutional amendment language would read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE IV, SECTIONS 4 AND 9;
ARTICLE XII, SECTIONS 23 AND 26

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[2] Florida Game and Freshwater Commission. *Florida Wildlife, V. 47 Number 6 50th Anniversary Edition.* Tallahassee, FL: Florida Game and Freshwater Commission, Nov-Dec. 1993. p. 28
[3] Ibid. p. 22
[4] Ibid. p. 28

DIRECTOR OF THE INTERIOR, DEPARTMENT OF THE INTERIOR CREATED; FISH AND WILDLIFE CONSERVATION COMMISSION ABOLISHED. Proposing an amendment to the State Constitution to create the Cabinet office of Director of the Interior for the supervision of matters pertaining to the state's natural resources, create a Department of the Interior to be responsible to the extent provided by law for conserving and protecting the natural resources and scenic beauty of the state, and abolish the Fish and Wildlife Conservation Commission; to provide an effective date of July 1, 2009, for the creation of the department and the abolishment of the commission; and to provide an effective date of January 6, 2009, for the creation of the Cabinet office of Director of the Interior, with the office to be filled at the 2008 general election to an initial term of 2 years, with subsequent 4-year terms.

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:

This joint resolution proposes a constitutional amendment which, if approved by the voters, would create an agency with certain responsibilities to be established by general law. As such, the fiscal impact of the creation of the judicial conference is indeterminate at this time.

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:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.[5] The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election or on such other date as may be specified in the amendment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the United States, 26 States have chosen to place the state's game and fish regulation and environmental regulation within a subdivision of an "umbrella" agency:

Alabama, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (Cabinet level agency), Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Wisconsin, and West Virginia.

There are 20 states where game and fish regulation are within a stand alone agency:

Alaska, Arizona, Colorado, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Virginia, Vermont, Washington, and Wyoming.

Four states have game and fish agencies that are constitutionally created:

Arkansas, California, Florida, and Oklahoma.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[5] See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

1 House Joint Resolution
2 A joint resolution proposing the amendment of Section 11
3 of Article III, Sections 4 and 9 of Article IV, and
4 Section 23 of Article XII and the creation of Section 26
5 of Article XII of the State Constitution to create the
6 Cabinet office of Commissioner of the Interior, create a
7 Department of the Interior, and remove the constitutional
8 mandate for a Fish and Wildlife Conservation Commission.
9
10 Be It Resolved by the Legislature of the State of Florida:
11
12 That the following amendment of Section 11 of Article III,
13 Sections 4 and 9 of Article IV, and Section 23 of Article XII and
14 the creation of Section 26 of Article XII of the State
15 Constitution are agreed to and shall be submitted to the electors
16 of this state for approval or rejection at the next general
17 election or at an earlier special election specifically
18 authorized by law for that purpose:
19 ARTICLE III
20 LEGISLATURE
21 SECTION 11. Prohibited special laws.--
22 (a) There shall be no special law or general law of local
23 application pertaining to:
24 (1) election, jurisdiction or duties of officers, except
25 officers of municipalities, chartered counties, special districts
26 or local governmental agencies;
27 (2) assessment or collection of taxes for state or county
28 purposes, including extension of time therefor, relief of tax

29 officers from due performance of their duties, and relief of
30 their sureties from liability;
31 (3) rules of evidence in any court;
32 (4) punishment for crime;
33 (5) petit juries, including compensation of jurors, except
34 establishment of jury commissions;
35 (6) change of civil or criminal venue;
36 (7) conditions precedent to bringing any civil or criminal
37 proceedings, or limitations of time therefor;
38 (8) refund of money legally paid or remission of fines,
39 penalties or forfeitures;
40 (9) creation, enforcement, extension or impairment of liens
41 based on private contracts, or fixing of interest rates on
42 private contracts;
43 (10) disposal of public property, including any interest
44 therein, for private purposes;
45 (11) vacation of roads;
46 (12) private incorporation or grant of privilege to a
47 private corporation;
48 (13) effectuation of invalid deeds, wills or other
49 instruments, or change in the law of descent;
50 (14) change of name of any person;
51 (15) divorce;
52 (16) legitimation or adoption of persons;
53 (17) relief of minors from legal disabilities;
54 (18) transfer of any property interest of persons under
55 legal disabilities or of estates of decedents;
56 (19) hunting or ~~fresh water~~ fishing;

57 (20) regulation of occupations which are regulated by a
58 state agency; or
59 (21) any subject when prohibited by general law passed by a
60 three-fifths vote of the membership of each house. Such law may
61 be amended or repealed by like vote.
62 (b) In the enactment of general laws on other subjects,
63 political subdivisions or other governmental entities may be
64 classified only on a basis reasonably related to the subject of
65 the law.
66 ARTICLE IV
67 EXECUTIVE
68 SECTION 4. Cabinet.--
69 (a) There shall be a cabinet composed of an attorney
70 general, a chief financial officer, a commissioner of the
71 interior, and a commissioner of agriculture. In addition to the
72 powers and duties specified herein, they shall exercise such
73 powers and perform such duties as may be prescribed by law. In
74 the event of a tie vote of the governor and cabinet, the side on
75 which the governor voted shall be deemed to prevail.
76 (b) The attorney general shall be the chief state legal
77 officer. There is created in the office of the attorney general
78 the position of statewide prosecutor. The statewide prosecutor
79 shall have concurrent jurisdiction with the state attorneys to
80 prosecute violations of criminal laws occurring or having
81 occurred, in two or more judicial circuits as part of a related
82 transaction, or when any such offense is affecting or has
83 affected two or more judicial circuits as provided by general
84 law. The statewide prosecutor shall be appointed by the attorney
85 general from not less than three persons nominated by the

86 judicial nominating commission for the supreme court, or as
87 otherwise provided by general law.
88 (c) The chief financial officer shall serve as the chief
89 fiscal officer of the state, and shall settle and approve
90 accounts against the state, and shall keep all state funds and
91 securities.
92 (d) The commissioner of agriculture shall have supervision
93 of matters pertaining to agriculture except as otherwise provided
94 by law.
95 (e) The commissioner of the interior shall have supervision
96 of matters pertaining to the state's natural resources and scenic
97 beauty, including fish and wildlife, except as otherwise provided
98 by law.
99 (f) ~~(e)~~ The governor as chair, the chief financial officer,
100 and the attorney general shall constitute the state board of
101 administration, which shall succeed to all the power, control,
102 and authority of the state board of administration established
103 pursuant to Article IX, Section 16 of the Constitution of 1885,
104 and which shall continue as a body at least for the life of
105 Article XII, Section 9(c).
106 (g) ~~(f)~~ The governor as chair, the chief financial officer,
107 the attorney general, the commissioner of the interior, and the
108 commissioner of agriculture shall constitute the trustees of the
109 internal improvement trust fund and the land acquisition trust
110 fund as provided by law.
111 (h) ~~(g)~~ The governor as chair, the chief financial officer,
112 the attorney general, the commissioner of the interior, and the
113 commissioner of agriculture shall constitute the agency head of
114 the Department of Law Enforcement.

115 SECTION 9. Department of the Interior ~~Fish and wildlife~~
116 ~~conservation commission~~.--There shall be a Department of the
117 Interior to be responsible for conserving and protecting the
118 state's natural resources and scenic beauty, including fish and
119 wildlife, except as otherwise provided by law ~~fish and wildlife~~
120 ~~conservation commission, composed of seven members appointed by~~
121 ~~the governor, subject to confirmation by the senate for staggered~~
122 ~~terms of five years. The commission shall exercise the regulatory~~
123 ~~and executive powers of the state with respect to wild animal~~
124 ~~life and fresh water aquatic life, and shall also exercise~~
125 ~~regulatory and executive powers of the state with respect to~~
126 ~~marine life, except that all license fees for taking wild animal~~
127 ~~life, fresh water aquatic life, and marine life and penalties for~~
128 ~~violating regulations of the commission shall be prescribed by~~
129 ~~general law. The commission shall establish procedures to ensure~~
130 ~~adequate due process in the exercise of its regulatory and~~
131 ~~executive functions. The legislature may enact laws in aid of the~~
132 ~~commission, not inconsistent with this section, except that there~~
133 ~~shall be no special law or general law of local application~~
134 ~~pertaining to hunting or fishing. The commission's exercise of~~
135 ~~executive powers in the area of planning, budgeting, personnel~~
136 ~~management, and purchasing shall be as provided by law. Revenue~~
137 ~~derived from license fees for the taking of wild animal life and~~
138 ~~fresh water aquatic life shall be appropriated to the commission~~
139 ~~by the legislature for the purposes of management, protection,~~
140 ~~and conservation of wild animal life and fresh water aquatic~~
141 ~~life. Revenue derived from license fees relating to marine life~~
142 ~~shall be appropriated by the legislature for the purposes of~~
143 ~~management, protection, and conservation of marine life as~~

144 ~~provided by law. The commission shall not be a unit of any other~~
145 ~~state agency and shall have its own staff, which includes~~
146 ~~management, research, and enforcement. Unless provided by general~~
147 ~~law, the commission shall have no authority to regulate matters~~
148 ~~relating to air and water pollution~~.
149 ARTICLE XII
150 SCHEDULE
151 SECTION 23. Department of the Interior ~~Fish and wildlife~~
152 ~~conservation commission~~.--
153 ~~(a) The initial members of the commission shall be the~~
154 ~~members of the game and fresh water fish commission and the~~
155 ~~marine fisheries commission who are serving on those commissions~~
156 ~~on the effective date of this amendment, who may serve the~~
157 ~~remainder of their respective terms. New appointments to the~~
158 ~~commission shall not be made until the retirement, resignation,~~
159 ~~removal, or expiration of the terms of the initial members~~
160 ~~results in fewer than seven members remaining.~~
161 ~~(b) The jurisdiction of the marine fisheries commission as~~
162 ~~set forth in statutes in effect on March 1, 1998, shall be~~
163 ~~transferred to the fish and wildlife conservation commission. The~~
164 ~~jurisdiction of the marine fisheries commission transferred to~~
165 ~~the commission shall not be expanded except as provided by~~
166 ~~general law. All rules of the marine fisheries commission and~~
167 ~~game and fresh water fish commission in effect on the effective~~
168 ~~date of this amendment shall become rules of the fish and~~
169 ~~wildlife conservation commission until superseded or amended by~~
170 ~~the commission.~~
171 ~~(c)~~ The creation of the Department of the Interior pursuant
172 to the amendment to Section 9 of Article IV shall take effect

173 July 1, 2009, and on that ~~the effective~~ date ~~of this amendment~~,
174 the constitutional mandate for a fish and wildlife conservation
175 ~~marine fisheries commission and game and fresh water fish~~
176 commission shall be removed ~~abolished~~.
177 ~~(d) This amendment shall take effect July 1, 1999.~~
178 SECTION 26. Commissioner of the Interior.--The amendment to
179 Section 4 of Article IV to create the Cabinet office of
180 commissioner of the interior shall take effect January 6, 2009,
181 with the office to be initially filled for a 2-year term at the
182 2008 general election.
183 CONSTITUTIONAL AMENDMENT
184 ARTICLE III, SECTION 11
185 ARTICLE IV, SECTIONS 4 AND 9
186 ARTICLE XII, SECTIONS 23 AND 26
187 CONSERVATION AND PROTECTION OF NATURAL RESOURCES AND SCENIC
188 BEAUTY, INCLUDING FISH AND WILDLIFE.--Proposing amendment of the
189 State Constitution to create a Department of the Interior to be
190 responsible for conserving and protecting the state's natural
191 resources and scenic beauty, including fish and wildlife, except
192 as otherwise provided by law; to create the office of
193 Commissioner of the Interior, a Cabinet office filled by
194 statewide election, to have supervision of matters pertaining to
195 the state's natural resources and scenic beauty, including fish
196 and wildlife, except as otherwise provided by law, and to serve
197 with the Governor and other Cabinet officers as the State Board
198 of Administration, as Trustees of the Internal Improvement Trust
199 Fund and the Land Acquisition Trust Fund, and as the agency head
200 of the Department of Law Enforcement; to remove the
201 constitutional mandate for a Fish and Wildlife Conservation

202 Commission charged with overseeing matters relating to fish and
203 wildlife; to preserve the prohibition against any special law or
204 general law of local application relating to hunting or fishing;
205 and to provide an effective date of July 1, 2009, for the
206 creation of the Department of the Interior and an effective date
207 of January 6, 2009, for the creation of the Cabinet office of
208 Commissioner of the Interior, with the office to be filled at the
209 2008 general election to an initial term of 2 years, with
210 subsequent 4-year terms.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee		Kliner	Kliner
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

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

Specifically, the bill:

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

Fiscal Impact: The state may experience an indeterminate loss of tax revenues associated with the increased caps and the 15% increase in tax credits for amounts it otherwise would have collected for intangible personal tax and corporate income tax.

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill increases tax credit provisions which will create additional incentives for voluntary cleanup of eligible contaminated sites. Increased participation in the state's Brownfields Redevelopment Program and the voluntary cleanup of eligible drycleaning sites will reduce trust fund expenditures, accelerate cleanup and redevelopment of these contaminated sites and have a positive impact on local communities as these properties begin to create new tax revenue.

Ensure Lower Taxes: The bill provides an increase for the percentage of costs of voluntary cleanup activity from 35 percent to 50 percent when obtaining a tax credit against intangible personal property tax or corporate income tax. The bill increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from $50,000 to $500,000.

Safeguard Individual Liberty and Promote Personal Responsibility: The bill provides an increase for the percentage of costs of voluntary cleanup activity from 35 percent to 50 percent when obtaining a tax credit against intangible personal property tax or corporate income tax and increases the dollar cap on the 10 percent completion incentive tax credit from $50,000 to $500,000. These provisions may result in increased participation in the Florida Brownfields Redevelopment Program and voluntary cleanup of drycleaning solvent contaminated sites.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

Legislative intent

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

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

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

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

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

A local government shall designate a brownfield area if:

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

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

Cleanup criteria

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

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

Eligibility and liability protection

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

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

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

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

Economic and financial incentives

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

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

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

Voluntary cleanup tax credit

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

The VCTC can apply toward either the intangible personal property tax or the corporate income tax. The amount of the credit is 35 percent of the costs of the voluntary cleanup activity that is integral to site rehabilitation. The maximum amount for a tax credit applicant is $250,000 per year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. However, the total

amount of the tax credit that may be granted each year under the program is $2 million. To date, however, the total amount of applications for the tax credits has not reached the $2 million cap in any one year. DEP reports that from creation of the tax credit program in 1998 through FY 02-03, the total value of tax credits issued annually has nearly doubled each year. A total of $3,867,638 in tax credits have been issued since its inception in 1998. Of the total amount of tax credits issued, $3,098,752 (80 percent) has been issued for brownfield sites and $768,886 (20 percent) has been issued for drycleaning solvent cleanup sites. Table A below, illustrates the fiscal year history associated with the voluntary tax credit program administered by DEP:

Table A

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

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

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

Brownfield Areas Loan Guarantee Program

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

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

Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund

Section 376.87, F.S., provides for brownfield property ownership clearance assistance. The Legislature recognized that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund was created to assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. The loans would be repaid in later years from the resale

of the brownfield properties following site rehabilitation and other activities that will enhance the property's ultimate value. This trust fund has never been capitalized and used for its intended purposes.

Enterprise Florida, Inc.:

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

Effect of Proposed Changes

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state may experience a loss of tax revenues associated with the increased caps and the 15% increase in tax credits for amounts it otherwise would have collected for intangible personal tax and corporate income tax.

2. Expenditures:

   a. Non-recurring Effects:

      The bill will require DEP to amend an existing rule detailing the tax credit application process. There will be indeterminate fiscal impacts associated with the cost of rulemaking related to publishing rule drafts and conducting public workshops for rule development.

   b. Recurring Effects: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown. Local governments may benefit from the satisfaction of tax liens and the replacement of properties onto local tax rolls as redevelopment occurs on brownfield areas.

2. Expenditures:

   a. Non-recurring Effects:

      Local governments should not have significant incidental costs associated with implementation of the amendments to the brownfields program.

   b. Recurring Effects:

      Local governments may benefit from the cleanup of brownfield sites and drycleaning solvent contaminated sites and may see an increased demand for passage of resolutions designating brownfield areas.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the completion incentive cap from 10 percent to 25 percent. The amount of tax credit that may be granted to a tax credit applicant per year is

increased from $250,000 to $500,000. These changes may result in increased participation in the Florida Brownfields Redevelopment Program and in voluntary cleanup of drycleaning solvent contaminated sites. Direct benefits may include employment opportunities for environmental cleanup contractors, future job opportunities for area residents, opportunity for developers to realize profits on property investments, the possibility of an increase in surrounding property value, and a reduction or elimination of risk to public health and the environment resulting from cleaning up contamination in the area.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to the redevelopment of brownfields;
3 amending ss. 199.1055, 220.1845, and 376.30781, F.S.;
4 increasing the amount and percentage of the credit that
5 may be applied against the intangible personal property
6 tax and the corporate income tax for the cost of voluntary
7 cleanup of a contaminated site; increasing the amount that
8 may be received by the taxpayer as an incentive to
9 complete the cleanup in the final year; increasing the
10 total amount of credits that may be granted in any year;
11 providing tax credits for voluntary cleanup activities
12 related to solid waste disposal facilities; providing
13 criteria for eligible sites and activities; directing the
14 Department of Environmental Protection to apply certain
15 criteria, requirements, and limitations for implementation
16 of such provisions; providing certain exceptions; amending
17 s. 288.9015, F.S.; requiring Enterprise Florida, Inc., to
18 aggressively market brownfields; amending s. 376.86, F.S.;
19 increasing the percentage of loans for redevelopment
20 projects in brownfield areas to which the state loan
21 guarantee applies under the Brownfield Areas Loan
22 Guarantee Program; repealing s. 376.87, F.S., relating to
23 the Brownfield Property Ownership Clearance Assistance;
24 repealing s. 376.875, F.S., relating to the Brownfield
25 Property Ownership Clearance Assistance Revolving Loan
26 Trust Fund; amending s. 14.2015, F.S.; deleting a
27 reference to the trust fund to conform; providing an
28 effective date.
29

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

59 $500,000 ~~$250,000~~ per year in tax credits which it can
60 subsequently transfer subject to the provisions in paragraph (g).
61 (c) If the credit granted under this section is not fully
62 used in any one year because of insufficient tax liability on the
63 part of the tax credit applicant, the unused amount may be
64 carried forward for a period not to exceed 5 years. Five years
65 after the date a credit is granted under this section, such
66 credit expires and may not be used. However, if during the 5-year
67 period the credit is transferred, in whole or in part, pursuant
68 to paragraph (g), each transferee has 5 years after the date of
69 transfer to use its credit.
70 (d) A taxpayer that receives a credit under s. 220.1845 is
71 ineligible to receive credit under this section in a given tax
72 year.
73 (e) A tax credit applicant that receives state-funded site
74 rehabilitation pursuant to s. 376.3078(3) for rehabilitation of a
75 drycleaning-solvent-contaminated site is ineligible to receive
76 credit under this section for costs incurred by the tax credit
77 applicant in conjunction with the rehabilitation of that site
78 during the same time period that state-administered site
79 rehabilitation was underway.
80 (f) The total amount of the tax credits which may be
81 granted under this section and s. 220.1845 is $5 ~~$2~~ million
82 annually.
83 (g)1. Tax credits that may be available under this section
84 to an entity eligible under s. 376.30781 may be transferred after
85 a merger or acquisition to the surviving or acquiring entity and
86 used in the same manner with the same limitations.

87 2. The entity or its surviving or acquiring entity as
88 described in subparagraph 1., may transfer any unused credit in
89 whole or in units of no less than 25 percent of the remaining
90 credit. The entity acquiring such credit may use it in the same
91 manner and with the same limitation as described in this section.
92 Such transferred credits may not be transferred again although
93 they may succeed to a surviving or acquiring entity subject to
94 the same conditions and limitations as described in this section.
95 3. In the event the credit provided for under this section
96 is reduced either as a result of a determination by the
97 Department of Environmental Protection or an examination or audit
98 by the Department of Revenue, such tax deficiency shall be
99 recovered from the first entity, or the surviving or acquiring
100 entity, to have claimed such credit up to the amount of credit
101 taken. Any subsequent deficiencies shall be assessed against any
102 entity acquiring and claiming such credit, or in the case of
103 multiple succeeding entities in the order of credit succession.
104 (h) In order to encourage completion of site rehabilitation
105 at contaminated sites being voluntarily cleaned up and eligible
106 for a tax credit under this section, the tax credit applicant may
107 claim an additional 25 ~~10~~ percent of the total cleanup costs, not
108 to exceed $500,000 ~~$50,000~~, in the final year of cleanup as
109 evidenced by the Department of Environmental Protection issuing a
110 "No Further Action" order for that site.
111 Section 2. Subsection (1) of section 220.1845, Florida
112 Statutes, is amended to read:
113 220.1845 Contaminated site rehabilitation tax credit.--
114 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

115 (a) A credit in the amount of 50 ~~35~~ percent of the costs of
116 voluntary cleanup activity that is integral to site
117 rehabilitation at the following sites is available against any
118 tax due for a taxable year under this chapter:
119 1. A drycleaning-solvent-contaminated site eligible for
120 state-funded site rehabilitation under s. 376.3078(3);
121 2. A drycleaning-solvent-contaminated site at which cleanup
122 is undertaken by the real property owner pursuant to s.
123 376.3078(11), if the real property owner is not also, and has
124 never been, the owner or operator of the drycleaning facility
125 where the contamination exists; or
126 3. A brownfield site in a designated brownfield area under
127 s. 376.80.
128 (b) A tax credit applicant, or multiple tax credit
129 applicants working jointly to clean up a single site, may not be
130 granted more than $500,000 ~~$250,000~~ per year in tax credits for
131 each site voluntarily rehabilitated. Multiple tax credit
132 applicants shall be granted tax credits in the same proportion as
133 their contribution to payment of cleanup costs. Subject to the
134 same conditions and limitations as provided in this section, a
135 municipality, county, or other tax credit applicant which
136 voluntarily rehabilitates a site may receive not more than
137 $500,000 ~~$250,000~~ per year in tax credits which it can
138 subsequently transfer subject to the provisions in paragraph (h).
139 (c) If the credit granted under this section is not fully
140 used in any one year because of insufficient tax liability on the
141 part of the corporation, the unused amount may be carried forward
142 for a period not to exceed 5 years. The carryover credit may be
143 used in a subsequent year when the tax imposed by this chapter

144 for that year exceeds the credit for which the corporation is
145 eligible in that year under this section after applying the other
146 credits and unused carryovers in the order provided by s.
147 220.02(8). Five years after the date a credit is granted under
148 this section, such credit expires and may not be used. However,
149 if during the 5-year period the credit is transferred, in whole
150 or in part, pursuant to paragraph (h), each transferee has 5
151 years after the date of transfer to use its credit.
152 (d) A taxpayer that files a consolidated return in this
153 state as a member of an affiliated group under s. 220.131(1) may
154 be allowed the credit on a consolidated return basis up to the
155 amount of tax imposed upon the consolidated group.
156 (e) A taxpayer that receives credit under s. 199.1055 is
157 ineligible to receive credit under this section in a given tax
158 year.
159 (f) A tax credit applicant that receives state-funded site
160 rehabilitation under s. 376.3078(3) for rehabilitation of a
161 drycleaning-solvent-contaminated site is ineligible to receive
162 credit under this section for costs incurred by the tax credit
163 applicant in conjunction with the rehabilitation of that site
164 during the same time period that state-administered site
165 rehabilitation was underway.
166 (g) The total amount of the tax credits which may be
167 granted under this section and s. 199.1055 is $5 ~~$2~~ million
168 annually.
169 (h)1. Tax credits that may be available under this section
170 to an entity eligible under s. 376.30781 may be transferred after
171 a merger or acquisition to the surviving or acquiring entity and
172 used in the same manner and with the same limitations.

173 2. The entity or its surviving or acquiring entity as
174 described in subparagraph 1., may transfer any unused credit in
175 whole or in units of no less than 25 percent of the remaining
176 credit. The entity acquiring such credit may use it in the same
177 manner and with the same limitation as described in this section.
178 Such transferred credits may not be transferred again although
179 they may succeed to a surviving or acquiring entity subject to
180 the same conditions and limitations as described in this section.
181 3. In the event the credit provided for under this section
182 is reduced either as a result of a determination by the
183 Department of Environmental Protection or an examination or audit
184 by the Department of Revenue, such tax deficiency shall be
185 recovered from the first entity, or the surviving or acquiring
186 entity, to have claimed such credit up to the amount of credit
187 taken. Any subsequent deficiencies shall be assessed against any
188 entity acquiring and claiming such credit, or in the case of
189 multiple succeeding entities in the order of credit succession.
190 (i) In order to encourage completion of site rehabilitation
191 at contaminated sites being voluntarily cleaned up and eligible
192 for a tax credit under this section, the tax credit applicant may
193 claim an additional 25 ~~10~~ percent of the total cleanup costs, not
194 to exceed $500,000 ~~$50,000~~, in the final year of cleanup as
195 evidenced by the Department of Environmental Protection issuing a
196 "No Further Action" order for that site.
197 Section 3. Section 376.30781, Florida Statutes, is amended
198 to read:
199 376.30781 Partial tax credits for rehabilitation of
200 drycleaning-solvent-contaminated sites and brownfield sites in

201 designated brownfield areas; application process; rulemaking
202 authority; revocation authority.--
203 (1) The Legislature finds that:
204 (a) To facilitate property transactions and economic growth
205 and development, it is in the interest of the state to encourage
206 the cleanup, at the earliest possible time, of drycleaning-
207 solvent-contaminated sites and brownfield sites in designated
208 brownfield areas.
209 (b) It is the intent of the Legislature to encourage the
210 voluntary cleanup of drycleaning-solvent-contaminated sites and
211 brownfield sites in designated brownfield areas by providing a
212 partial tax credit for the restoration of such property in
213 specified circumstances.
214 (2)(a) A credit in the amount of 50 ~~35~~ percent of the costs
215 of voluntary cleanup activity that is integral to site
216 rehabilitation at the following sites is allowed pursuant to ss.
217 199.1055 and 220.1845:
218 1. A drycleaning-solvent-contaminated site eligible for
219 state-funded site rehabilitation under s. 376.3078(3);
220 2. A drycleaning-solvent-contaminated site at which cleanup
221 is undertaken by the real property owner pursuant to s.
222 376.3078(11), if the real property owner is not also, and has
223 never been, the owner or operator of the drycleaning facility
224 where the contamination exists; or
225 3. A brownfield site in a designated brownfield area under
226 s. 376.80.
227 (b) A tax credit applicant, or multiple tax credit
228 applicants working jointly to clean up a single site, may not be
229 granted more than $500,000 ~~$250,000~~ per year in tax credits for

230 each site voluntarily rehabilitated. Multiple tax credit
231 applicants shall be granted tax credits in the same proportion as
232 their contribution to payment of cleanup costs. Tax credits are
233 available only for site rehabilitation conducted during the
234 calendar year for which the tax credit application is submitted.
235 (c) In order to encourage completion of site rehabilitation
236 at contaminated sites that are being voluntarily cleaned up and
237 that are eligible for a tax credit under this section, the tax
238 credit applicant may claim an additional 25 ~~10~~ percent of the
239 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the final
240 year of cleanup as evidenced by the Department of Environmental
241 Protection issuing a "No Further Action" order for that site.
242 (3) The Department of Environmental Protection shall be
243 responsible for allocating the tax credits provided for in ss.
244 199.1055 and 220.1845, not to exceed a total of $5 ~~$2~~ million in
245 tax credits annually.
246 (4) To claim the credit for site rehabilitation conducted
247 during the current calendar year, each tax credit applicant must
248 apply to the Department of Environmental Protection for an
249 allocation of the $5 ~~$2~~ million annual credit by January 15 of
250 the following year on a form developed by the Department of
251 Environmental Protection in cooperation with the Department of
252 Revenue. The form shall include an affidavit from each tax credit
253 applicant certifying that all information contained in the
254 application, including all records of costs incurred and claimed
255 in the tax credit application, are true and correct. If the
256 application is submitted pursuant to subparagraph (2)(a)2., the
257 form must include an affidavit signed by the real property owner
258 stating that it is not, and has never been, the owner or operator

259 of the drycleaning facility where the contamination exists.
260 Approval of partial tax credits must be accomplished on a first-
261 come, first-served basis based upon the date complete
262 applications are received by the Division of Waste Management. A
263 tax credit applicant shall submit only one complete application
264 per site for each calendar year's site rehabilitation costs.
265 Incomplete placeholder applications shall not be accepted and
266 will not secure a place in the first-come, first-served
267 application line. To be eligible for a tax credit, the tax credit
268 applicant must:
269 (a) Have entered into a voluntary cleanup agreement with
270 the Department of Environmental Protection for a drycleaning-
271 solvent-contaminated site or a Brownfield Site Rehabilitation
272 Agreement, as applicable; and
273 (b) Have paid all deductibles pursuant to s. 376.3078(3)(e)
274 for eligible drycleaning-solvent-cleanup program sites.
275 (5) To obtain the tax credit certificate, a tax credit
276 applicant must annually file an application for certification,
277 which must be received by the Division of Waste Management of the
278 Department of Environmental Protection by January 15 of the year
279 following the calendar year for which site rehabilitation costs
280 are being claimed in a tax credit application. The tax credit
281 applicant must provide all pertinent information requested on the
282 tax credit application form, including, at a minimum, the name
283 and address of the tax credit applicant and the address and
284 tracking identification number of the eligible site. Along with
285 the tax credit application form, the tax credit applicant must
286 submit the following:

287 (a) A nonrefundable review fee of $250 made payable to the
288 Water Quality Assurance Trust Fund to cover the administrative
289 costs associated with the department's review of the tax credit
290 application;
291 (b) Copies of contracts and documentation of contract
292 negotiations, accounts, invoices, sales tickets, or other payment
293 records from purchases, sales, leases, or other transactions
294 involving actual costs incurred for that tax year related to site
295 rehabilitation, as that term is defined in ss. 376.301 and
296 376.79;
297 (c) Proof that the documentation submitted pursuant to
298 paragraph (b) has been reviewed and verified by an independent
299 certified public accountant in accordance with standards
300 established by the American Institute of Certified Public
301 Accountants. Specifically, the certified public accountant must
302 attest to the accuracy and validity of the costs incurred and
303 paid by conducting an independent review of the data presented by
304 the tax credit applicant. Accuracy and validity of costs incurred
305 and paid would be determined once the level of effort was
306 certified by an appropriate professional registered in this state
307 in each contributing technical discipline. The certified public
308 accountant's report would also attest that the costs included in
309 the application form are not duplicated within the application. A
310 copy of the accountant's report shall be submitted to the
311 Department of Environmental Protection with the tax credit
312 application; and
313 (d) A certification form stating that site rehabilitation
314 activities associated with the documentation submitted pursuant
315 to paragraph (b) have been conducted under the observation of,

316 and related technical documents have been signed and sealed by,
317 an appropriate professional registered in this state in each
318 contributing technical discipline. The certification form shall
319 be signed and sealed by the appropriate registered professionals
320 stating that the costs incurred were integral, necessary, and
321 required for site rehabilitation, as that term is defined in ss.
322 376.301 and 376.79.
323 (6) The certified public accountant and appropriate
324 registered professionals submitting forms as part of a tax credit
325 application must verify such forms. Verification must be
326 accomplished as provided in s. 92.525(1)(b) and subject to the
327 provisions of s. 92.525(3).
328 (7) The Department of Environmental Protection shall review
329 the tax credit application and any supplemental documentation
330 that the tax credit applicant may submit prior to the annual
331 application deadline in order to have the application considered
332 complete, for the purpose of verifying that the tax credit
333 applicant has met the qualifying criteria in subsections (2) and
334 (4) and has submitted all required documentation listed in
335 subsection (5). Upon verification that the tax credit applicant
336 has met these requirements, the department shall issue a written
337 decision granting eligibility for partial tax credits (a tax
338 credit certificate) in the amount of 50 ~~35~~ percent of the total
339 costs claimed, subject to the $500,000 ~~$250,000~~ limitation, for
340 the calendar year for which the tax credit application is
341 submitted based on the report of the certified public accountant
342 and the certifications from the appropriate registered technical
343 professionals.

344 (8) On or before March 1, the Department of Environmental
345 Protection shall inform each eligible tax credit applicant of the
346 amount of its partial tax credit and provide each eligible tax
347 credit applicant with a tax credit certificate that must be
348 submitted with its tax return to the Department of Revenue to
349 claim the tax credit or be transferred pursuant to s.
350 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
351 the payment of refunds if total credits exceed the amount of tax
352 owed.
353 (9) If a tax credit applicant does not receive a tax credit
354 allocation due to an exhaustion of the $5 ~~$2~~ million annual tax
355 credit authorization, such application will then be included in
356 the same first-come, first-served order in the next year's annual
357 tax credit allocation, if any, based on the prior year
358 application.
359 (10) The Department of Environmental Protection may adopt
360 rules to prescribe the necessary forms required to claim tax
361 credits under this section and to provide the administrative
362 guidelines and procedures required to administer this section.
363 (11) The Department of Environmental Protection may revoke
364 or modify any written decision granting eligibility for partial
365 tax credits under this section if it is discovered that the tax
366 credit applicant submitted any false statement, representation,
367 or certification in any application, record, report, plan, or
368 other document filed in an attempt to receive partial tax credits
369 under this section. The Department of Environmental Protection
370 shall immediately notify the Department of Revenue of any revoked
371 or modified orders affecting previously granted partial tax

372 credits. Additionally, the tax credit applicant must notify the
373 Department of Revenue of any change in its tax credit claimed.
374 (12) A tax credit applicant who receives state-funded site
375 rehabilitation under s. 376.3078(3) for rehabilitation of a
376 drycleaning-solvent-contaminated site is ineligible to receive a
377 tax credit under s. 199.1055 or s. 220.1845 for costs incurred by
378 the tax credit applicant in conjunction with the rehabilitation
379 of that site during the same time period that state-administered
380 site rehabilitation was underway.
381 (13) At eligible sites listed in paragraph (2)(a), in
382 addition to any tax credits that may be claimed for site
383 rehabilitation as defined in s. 376.301, a tax credit applicant
384 may also claim tax credits pursuant to the requirements of this
385 section for voluntary cleanup activity that addresses a solid
386 waste disposal facility, subject to the following criteria:
387 (a) For purposes of this subsection, "solid waste" and
388 "solid waste disposal facility" have the same meanings as defined
389 in s. 403.703, but shall not include sites that merely have
390 litter or debris scattered on the surface of the land;
391 (b) The solid waste disposal facility must have ceased
392 operation prior to 1988 and must not have been or must not
393 currently be subject to any department solid waste permit;
394 (c) Tax credits may be claimed for one or more of the
395 following activities:
396 1. Removing all solid waste from the solid waste disposal
397 facility and disposing of it in a permitted solid waste
398 management facility;
399 2. Closing the solid waste disposal facility, which may
400 include partial removal and disposal of solid waste in a

401 permitted solid waste management facility, in accordance with the
402 requirements of chapter 62-701, Florida Administrative Code,
403 including grading the facility to achieve appropriate side
404 slopes, installing final cover, controlling stormwater, and
405 providing gas management, if necessary;
406 3. Performing long-term care for the solid waste disposal
407 facility in accordance with the requirements of chapter 62-701,
408 Florida Administrative Code, after the facility has been properly
409 closed; and
410 4. Performing groundwater evaluation and assessment after
411 removal of all solid waste or after the solid waste disposal
412 facility has been properly closed;
413 (d) If the solid waste disposal facility is closed as
414 described in subparagraph (c)2., the redevelopment of the
415 property containing the solid waste disposal facility shall be
416 limited to commercial or industrial land use only and shall be
417 subject to appropriate engineering and institutional controls,
418 and tax credits shall be awarded only after a restrictive
419 covenant limiting future uses of the property has been reviewed
420 and approved by the department and properly recorded;
421 (e) Costs for crushing or compacting the solid waste in
422 place solely to make it suitable for future development shall not
423 be eligible for tax credits pursuant to this section; and
424 (f) Any activity conducted in accordance with this
425 subsection shall not be considered site rehabilitation.
426 (14) In implementing subsection (13), the department shall
427 use the same criteria, requirements, and limitations detailed in
428 subsections (1)-(12) of this section and ss. 199.1055 and
429 220.1845, with the following exceptions:

430 (a) Where reference is made to "site rehabilitation," the
431 department shall consider whether the costs claimed are for
432 voluntary cleanup activity that addresses a solid waste disposal
433 facility as outlined in subsection (13);
434 (b) In lieu of the certification requirements of paragraph
435 (5)(d), a tax credit applicant seeking a tax credit pursuant to
436 subsection (13) shall include in the tax credit application:
437 1. A certification that the applicant has determined, after
438 consultation with local government officials and the department,
439 that the solid waste disposal facility ceased operating prior to
440 January 1, 1974, and is not or has never been subject to a solid
441 waste permit;
442 2. A certification signed and sealed by an appropriate
443 registered professional and previously approved by the department
444 that the solid waste disposal facility has been properly closed
445 pursuant to chapter 62-701, Florida Administrative Code, or that
446 all solid waste was removed and properly disposed of; and
447 3. A certification signed and sealed by an appropriate
448 registered professional that costs incurred and claimed in the
449 tax credit application were integral, necessary, and required to
450 conduct those activities listed in paragraph (13)(c), as
451 applicable;
452 (c) Tax credit applications in which costs are claimed
453 pursuant to subparagraphs (13)(c)1. and 2. shall not be subject
454 to the calendar-year limitation and January 15 annual application
455 deadline, but the department shall accept a one-time application
456 filed after the tax credit applicant has completed all
457 requirements listed in subsection (13) and this subsection;

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

487 (1) The Brownfield Areas Loan Guarantee Council is created
488 to review and approve or deny by a majority vote of its
489 membership, the situations and circumstances for participation in
490 partnerships by agreements with local governments, financial
491 institutions, and others associated with the redevelopment of
492 brownfield areas pursuant to the Brownfields Redevelopment Act
493 for a limited state guaranty of up to 5 years of loan guarantees
494 or loan loss reserves issued pursuant to law. The limited state
495 loan guaranty applies only to 25 ~~10~~ percent of the primary
496 lenders loans for redevelopment projects in brownfield areas. A
497 limited state guaranty of private loans or a loan loss reserve is
498 authorized for lenders licensed to operate in the state upon a
499 determination by the council that such an arrangement would be in
500 the public interest and the likelihood of the success of the loan
501 is great.
502 Section 6. Sections 376.87 and 376.875, Florida Statutes,
503 are repealed.
504 Section 7. Paragraph (f) of subsection (2) of section
505 14.2015, Florida Statutes, is amended to read:
506 14.2015 Office of Tourism, Trade, and Economic Development;
507 creation; powers and duties.--
508 (2) The purpose of the Office of Tourism, Trade, and
509 Economic Development is to assist the Governor in working with
510 the Legislature, state agencies, business leaders, and economic
511 development professionals to formulate and implement coherent and
512 consistent policies and strategies designed to provide economic
513 opportunities for all Floridians. To accomplish such purposes,
514 the Office of Tourism, Trade, and Economic Development shall:

515 (f)1. Administer the Florida Enterprise Zone Act under ss.
516 290.001-290.016, the community contribution tax credit program
517 under ss. 220.183 and 624.5105, the tax refund program for
518 qualified target industry businesses under s. 288.106, the tax-
519 refund program for qualified defense contractors under s.
520 288.1045, contracts for transportation projects under s. 288.063,
521 the sports franchise facility program under s. 288.1162, the
522 professional golf hall of fame facility program under s.
523 288.1168, the expedited permitting process under s. 403.973, the
524 Rural Community Development Revolving Loan Fund under s. 288.065,
525 the Regional Rural Development Grants Program under s. 288.018,
526 the Certified Capital Company Act under s. 288.99, the Florida
527 State Rural Development Council, the Rural Economic Development
528 Initiative, and other programs that are specifically assigned to
529 the office by law, by the appropriations process, or by the
530 Governor. Notwithstanding any other provisions of law, the office
531 may expend interest earned from the investment of program funds
532 deposited in the Grants and Donations Trust Fund ~~and the~~
533 ~~Brownfield Property Ownership Clearance Assistance Revolving Loan~~
534 ~~Trust Fund~~ to contract for the administration of the programs, or
535 portions of the programs, enumerated in this paragraph or
536 assigned to the office by law, by the appropriations process, or
537 by the Governor. Such expenditures shall be subject to review
538 under chapter 216.
539 2. The office may enter into contracts in connection with
540 the fulfillment of its duties concerning the Florida First
541 Business Bond Pool under chapter 159, tax incentives under
542 chapters 212 and 220, tax incentives under the Certified Capital
543 Company Act in chapter 288, foreign offices under chapter 288,

544 the Enterprise Zone program under chapter 290, the Seaport
545 Employment Training program under chapter 311, the Florida
546 Professional Sports Team License Plates under chapter 320,
547 Spaceport Florida under chapter 331, Expedited Permitting under
548 chapter 403, and in carrying out other functions that are
549 specifically assigned to the office by law, by the appropriations
550 process, or by the Governor.
551 Section 8. This act shall take effect July 1, 2006.

PCB ENVR 06-05

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: 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		Kliner	Kliner
1)			
2)			
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.

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 not 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 million 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.

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. 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 9. Section 403.4043, F.S., is amended to delete obsolete language relating to compost standards rulemaking.

Section 10. 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 11. 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 12. 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 13. 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 14. 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 15. Section 403.7095, F.S., is amended to correct a cross-reference.

Section 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. Section 403.7075, F.S., relating to the submission of plans by certain persons to construct and operate a solid waste facility, is repealed. This section conflicted with the provisions in ch. 471, F.S., that regulate professional engineers.

Section 403.756, F.S., relating to a used oil report, is repealed. This information will be included in the DEP's Solid Waste Management in Florida report.

Section 27. Sections 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.

Section 28. 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:

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:

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

1 A bill to be entitled
2 An act relating to environmental protection; amending s.
3 403.413, F.S.; clarifying who is liable for dumping under
4 the Florida Litter Law; amending s. 403.4131, F.S.;
5 deleting the provisions relating to Keep Florida
6 Beautiful, Inc.; providing that certain counties are
7 encouraged to develop a regional approach to coordinating
8 litter control and prevention programs; deleting certain
9 requirements for a litter survey; placing the Wildflower
10 Advisory Council under the control of the Department of
11 Agriculture and Consumer Services; revising the duties of
12 the council; amending s. 403.41315, F.S.; conforming
13 provisions to changes made to the Keep Florida Beautiful,
14 Inc., program; amending s. 403.4133, F.S.; placing the
15 Adopt-a-Shore Program within the Department of
16 Environmental Protection; amending s. 320.08058, F.S.;
17 requiring that the proceeds of the fees paid for
18 Wildflower license plates be distributed to the Department
19 of Agriculture and Consumer Services; specifying uses of
20 the proceeds; transferring the balance of such proceeds
21 from Keep Florida Beautiful, Inc., to the Department of
22 Agriculture and Consumer Services; amending s. 403.703,
23 F.S.; reordering definitions in alphabetical order;
24 clarifying certain definitions and deleting definitions
25 that are not used; amending ss. 316.003, 377.709, and
26 487.048, F.S.; conforming cross-references; amending s.
27 403.704, F.S.; deleting certain obsolete provisions
28 relating to the state solid waste management program;
29 amending s. 403.7043, F.S.; deleting certain obsolete and

30 conflicting provisions relating to compost standards;
31 amending s. 403.7045, F.S.; providing that industrial
32 byproducts are not regulated under certain circumstances;
33 conforming a cross-reference; clarifying certain
34 provisions governing dredged material; amending s.
35 403.707, F.S.; clarifying the Department of Environmental
36 Preservation's permit authority; deleting certain obsolete
37 provisions; creating s. 403.7071, F.S.; providing for the
38 management and disposal of storm-generated debris;
39 amending s. 403.708, F.S.; deleting obsolete provisions
40 and clarifying certain provisions governing landfills;
41 amending s. 403.709, F.S.; revising the provisions
42 relating to the distribution of the waste tire fees;
43 amending s. 403.7095, F.S., relating to the solid waste
44 management grant program; conforming a cross-reference;
45 amending s. 403.7125, F.S.; deleting certain definitions
46 that appear elsewhere in law and clarifying certain
47 financial-disclosure provisions with respect to the
48 closure of a landfill; amending s. 403.716, F.S.; deleting
49 certain provisions relating to the training of certain
50 facility operators; amending s. 403.717, F.S.; clarifying
51 the provisions relating to waste tires and the processing
52 of waste tires; transferring, renumbering, and amending s.
53 403.7221, F.S.; increasing the duration of certain
54 research, development, and demonstration permits; amending
55 s. 403.201, F.S.; conforming a cross-reference; amending
56 s. 403.722, F.S.; clarifying provisions relating to who is
57 required to obtain certain hazardous waste permits;
58 amending s. 403.7226, F.S.; deleting a provision requiring

59 a report that is duplicative of other reports; amending s.
60 403.724, F.S.; clarifying certain financial-responsibility
61 provisions; amending s. 403.7255, F.S.; providing
62 additional requirements regarding the public notification
63 of certain contaminated sites; amending s. 403.726, F.S.;
64 authorizing the Department of Environmental Protection to
65 issue an order to abate certain hazards; amending s.
66 403.7265, F.S.; requiring a local government to provide
67 matching funds for certain grants; providing that matching
68 funds are not required under certain conditions; repealing
69 s. 403.7075, F.S., relating to the submission of certain
70 plans for solid waste management facilities; repealing s.
71 403.756, F.S., relating to an annual used-oil report;
72 repealing ss. 403.78, 403.781, 403.782, 403.783, 403.784,
73 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871,
74 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891,
75 403.7892, 403.7893, and 403.7895, F.S., relating to the
76 Statewide Multipurpose Hazardous Waste Facility Siting
77 Act; providing an effective date.
78
79 Be It Enacted by the Legislature of the State of Florida:
80
81 Section 1. Subsection (4) of section 403.413, Florida
82 Statutes, is amended to read:
83 403.413 Florida Litter Law.--
84 (4) DUMPING LITTER PROHIBITED.--Unless otherwise authorized
85 by law or permit, it is unlawful for any person to dump litter in
86 any manner or amount:
87 (a) In or on any public highway, road, street, alley, or

88 thoroughfare, including any portion of the right-of-way thereof,
89 or any other public lands, except in containers or areas lawfully
90 provided therefor. When any litter is thrown or discarded from a
91 motor vehicle, the operator or owner of the motor vehicle, or
92 both, shall be deemed in violation of this section;
93 (b) In or on any freshwater lake, river, canal, or stream
94 or tidal or coastal water of the state, including canals. When
95 any litter is thrown or discarded from a boat, the operator or
96 owner of the boat, or both, shall be deemed in violation of this
97 section; or
98 (c) In or on any private property, unless prior consent of
99 the owner has been given and unless the dumping of such litter by
100 such person will not cause a public nuisance or otherwise be in
101 violation of any other state or local law, rule, or regulation.
102 Section 2. Section 403.4131, Florida Statutes, is amended
103 to read:
104 403.4131 Litter control; Wildflower Advisory Council ~~"Keep~~
105 ~~Florida Beautiful, Incorporated"; placement of signs~~.--
106 ~~(1) It is the intent of the Legislature that a coordinated~~
107 ~~effort of interested businesses, environmental and civic~~
108 ~~organizations, and state and local agencies of government be~~
109 ~~developed to plan for and assist in implementing solutions to the~~
110 ~~litter and solid waste problems in this state and that the state~~
111 ~~provide financial assistance for the establishment of a nonprofit~~
112 ~~organization with the name of "Keep Florida Beautiful,~~
113 ~~Incorporated," which shall be registered, incorporated, and~~
114 ~~operated in compliance with chapter 617. This nonprofit~~
115 ~~organization shall coordinate the statewide campaign and operate~~
116 ~~as the grassroots arm of the state's effort and shall serve as an~~

117 ~~umbrella organization for volunteer based community programs. The~~
118 ~~organization shall be dedicated to helping Florida and its local~~
119 ~~communities solve solid waste problems, to developing and~~
120 ~~implementing a sustained litter prevention campaign, and to act~~
121 ~~as a working public private partnership in helping to implement~~
122 ~~the state's Solid Waste Management Act. As part of this effort,~~
123 ~~Keep Florida Beautiful, Incorporated, in cooperation with the~~
124 ~~Environmental Education Foundation, shall strive to educate~~
125 ~~citizens, visitors, and businesses about the important~~
126 ~~relationship between the state's environment and economy. Keep~~
127 ~~Florida Beautiful, Incorporated, is encouraged to explore and~~
128 ~~identify economic incentives to improve environmental initiatives~~
129 ~~in the area of solid waste management. The membership of the~~
130 ~~board of directors of this nonprofit organization may include~~
131 ~~representatives of the following organizations: the Florida~~
132 ~~League of Cities, the Florida Association of Counties, the~~
133 ~~Governor's Office, the Florida Chapter of the National Solid~~
134 ~~Waste Management Association, the Florida Recyclers Association,~~
135 ~~the Center for Marine Conservation, Chapter of the Sierra Club,~~
136 ~~the Associated Industries of Florida, the Florida Soft Drink~~
137 ~~Association, the Florida Petroleum Council, the Retail Grocers~~
138 ~~Association of Florida, the Florida Retail Federation, the Pulp~~
139 ~~and Paper Association, the Florida Automobile Dealers~~
140 ~~Association, the Beer Industries of Florida, the Florida Beer~~
141 ~~Wholesalers Association, and the Distilled Spirits Wholesalers.~~
142 ~~(2) As a partner working with government, business, civic,~~
143 ~~environmental, and other organizations, Keep Florida Beautiful,~~
144 ~~Incorporated, shall strive to assist the state and its local~~
145 ~~communities by contracting for the development of a highly~~

146 ~~visible antilitter campaign that, at a minimum, includes:~~
147 ~~(a) Coordinating with the Center for Marine Conservation~~
148 ~~and the Center for Solid and Hazardous Waste Management to~~
149 ~~identify components of the marine debris and litter stream and~~
150 ~~groups that habitually litter.~~
151 ~~(b) Designing appropriate advertising to promote the proper~~
152 ~~management of solid waste, with emphasis on educating groups that~~
153 ~~habitually litter.~~
154 ~~(c) Fostering public awareness and striving to build an~~
155 ~~environmental ethic in this state through the development of~~
156 ~~educational programs that result in an understanding and in~~
157 ~~action on the part of individuals and organizations about the~~
158 ~~role they must play in preventing litter and protecting Florida's~~
159 ~~environment.~~
160 ~~(d) Developing educational programs and materials that~~
161 ~~promote the proper management of solid waste, including the~~
162 ~~proper disposal of litter.~~
163 ~~(e) Administering grants provided by the state. Grants~~
164 ~~authorized under this section shall be subject to normal~~
165 ~~department audit procedures and review.~~
166 (1) ~~(3)~~ The Department of Transportation shall establish an
167 "adopt-a-highway" program to allow local organizations to be
168 identified with specific highway cleanup and highway
169 beautification projects authorized under s. 339.2405 ~~and shall~~
170 ~~coordinate such efforts with Keep Florida Beautiful, Inc~~. The
171 department shall report to the Governor and the Legislature on
172 the progress achieved and the savings incurred by the "adopt-a-
173 highway" program. The department shall also monitor and report on
174 compliance with provisions of the adopt-a-highway program to

175 ensure that organizations that participate in the program comply
176 with the goals identified by the department.
177 (2) ~~(4)~~ The Department of Transportation shall place signs
178 discouraging litter at all off-ramps of the interstate highway
179 system in the state. ~~The department shall place other highway~~
180 ~~signs as necessary to discourage littering through use of the~~
181 ~~antilitter program developed by Keep Florida Beautiful,~~
182 ~~Incorporated.~~
183 (3) ~~(5)~~ Each county is encouraged to initiate a litter
184 control and prevention program or to expand upon its existing
185 program. The department shall establish a system of grants for
186 municipalities and counties to implement litter control and
187 prevention programs. In addition to the activities described in
188 subsection (1), such grants shall at a minimum be used for litter
189 cleanup, grassroots educational programs involving litter removal
190 and prevention, and the placement of litter and recycling
191 receptacles. Counties are encouraged to form working public
192 private partnerships as authorized under this section to
193 implement litter control and prevention programs at the community
194 level. The grants authorized pursuant to this section shall be
195 incorporated as part of the recycling and education grants.
196 Counties that have a population under 100,000 ~~75,000~~ are
197 encouraged to develop a regional approach to administering and
198 coordinating their litter control and prevention programs.
199 ~~(6) The department may contract with Keep Florida~~
200 ~~Beautiful, Incorporated, to help carry out the provisions of this~~
201 ~~section. All contracts authorized under this section are subject~~
202 ~~to normal department audit procedures and review.~~
203 ~~(7) In order to establish continuity for the statewide~~

204 ~~program, those local governments and community programs receiving~~
205 ~~grants for litter prevention and control must use the official~~
206 ~~State of Florida litter control or campaign symbol adopted by~~
207 ~~Keep Florida Beautiful, Incorporated, for use on various~~
208 ~~receptacles and program material.~~
209 ~~(8) The Legislature establishes a litter reduction goal of~~
210 ~~50 percent reduction from the period January 1, 1994, to January~~
211 ~~1, 1997. The method of determination used to measure the~~
212 ~~reduction in litter is the survey conducted by the Center for~~
213 ~~Solid and Hazardous Waste Management. The center shall consider~~
214 ~~existing litter survey methodologies.~~
215 ~~(9) The Department of Environmental Protection shall~~
216 ~~contract with the Center for Solid and Hazardous Waste Management~~
217 ~~for an ongoing annual litter survey, the first of which is to be~~
218 ~~conducted by January 1, 1994. The center shall appoint a broad-~~
219 ~~based work group not to exceed seven members to assist in the~~
220 ~~development and implementation of the survey. Representatives~~
221 ~~from the university system, business, government, and the~~
222 ~~environmental community shall be considered by the center to~~
223 ~~serve on the work group. Final authority on implementing and~~
224 ~~conducting the survey rests with the center. The first survey is~~
225 ~~to be designed to serve as a baseline by measuring the amount of~~
226 ~~current litter and marine debris, and is to include a methodology~~
227 ~~for measuring the reduction in the amount of litter and marine~~
228 ~~debris to determine the progress toward the litter reduction goal~~
229 ~~established in subsection (8). Annually thereafter, additional~~
230 ~~surveys are to be conducted and must also include a methodology~~
231 ~~for measuring the reduction in the amount of litter and for~~
232 ~~determining progress toward the litter reduction goal established~~

233 ~~in subsection (8).~~
234 (4) ~~(10)~~ (a) There is created within the Department of
235 Agriculture and Consumer Services ~~within Keep Florida Beautiful,~~
236 ~~Inc.,~~ the Wildflower Advisory Council, consisting of a maximum of
237 ten ~~nine~~ members ~~to direct and oversee the expenditure of the~~
238 ~~Wildflower Account~~. The Wildflower Advisory Council shall include
239 a representative from the University of Florida Institute of Food
240 and Agricultural Sciences, the Florida Department of
241 Transportation, the Department of Agriculture and Consumer
242 Services, ~~and~~ the Florida Department of Environmental Protection,
243 the Florida League of Cities, and the Florida Association of
244 Counties. Other members of the committee may include
245 representatives from the Florida Federation of Garden Clubs,
246 Inc., Think Beauty Foundation, the Florida Chapter of the
247 American Society of Landscape Architects, Inc., and a
248 representative of the Master Gardener's Program.
249 (b) The Wildflower Advisory Council shall advise the
250 Department of Agriculture and Consumer Services and develop
251 procedures of operation, research contracts, educational and
252 marketing programs, and wildflower planting grants for Florida
253 native wildflowers, plants, and grasses. The council shall also
254 make recommendations to the department concerning ~~the final~~
255 ~~determination of~~ what constitutes acceptable species of
256 wildflowers and other plantings supported by these programs.
257 Section 3. Section 403.41315, Florida Statutes, is amended
258 to read:
259 403.41315 Comprehensive illegal dumping, litter, and marine
260 debris control and prevention.--
261 (1) The Legislature finds that a comprehensive illegal

262 dumping, litter, and marine debris control and prevention program
263 is necessary to protect the beauty and the environment of
264 Florida. The Legislature also recognizes that a comprehensive
265 illegal dumping, litter, and marine debris control and prevention
266 program will have a positive effect on the state's economy. The
267 Legislature finds that the state's rapid population growth, the
268 ever-increasing mobility of its population, and the large number
269 of tourists contribute to the need for a comprehensive illegal
270 dumping, litter, and marine debris control and prevention
271 program. The Legislature further finds that the program must be
272 coordinated and capable of having statewide identity and
273 grassroots community support.
274 (2) The comprehensive illegal dumping, litter, and marine
275 debris control and prevention program at a minimum must include
276 the following:
277 (a) A local ~~statewide~~ public awareness and educational
278 campaign~~, coordinated by Keep Florida Beautiful, Incorporated,~~ to
279 educate individuals, government, businesses, and other
280 organizations concerning the role they must assume in preventing
281 and controlling litter.
282 (b) Enforcement provisions authorized under s. 403.413.
283 (c) Enforcement officers whose responsibilities include
284 grassroots education along with enforcing litter and illegal
285 dumping violations.
286 (d) Local illegal dumping, litter, and marine debris
287 control and prevention programs operated at the county level with
288 emphasis placed on grassroots educational programs designed to
289 prevent and remove litter and marine debris.
290 (e) A statewide adopt-a-highway program as authorized under

291 s. 403.4131.
292 (f) The highway beautification program authorized under s.
293 339.2405.
294 (g) A statewide Adopt-a-Shore program that includes beach,
295 river, and lake shorelines and emphasizes litter and marine
296 debris cleanup and prevention.
297 (h) The prohibition of balloon releases as authorized under
298 s. 372.995.
299 (i) The placement of approved identifiable litter and
300 recycling receptacles.
301 (j) Other educational programs that are implemented at the
302 grassroots level ~~coordinated through Keep Florida Beautiful,~~
303 ~~Inc.,~~ involving volunteers and community programs that clean up
304 and prevent litter, including Youth Conservation Corps
305 activities.
306 Section 4. Section 403.4133, Florida Statutes, is amended
307 to read:
308 403.4133 Adopt-a-Shore Program.--
309 (1) The Legislature finds that litter and illegal dumping
310 present a threat to the state's wildlife, environment, and
311 shorelines. The Legislature further finds that public awareness
312 and education will assist in preventing litter from being
313 illegally deposited along the state's shorelines.
314 (2) The Adopt-a-Shore Program shall be created within the
315 Department of Environmental Protection ~~nonprofit organization~~
316 ~~referred to in s. 403.4131(1), named Keep Florida Beautiful,~~
317 ~~Incorporated~~. The program shall be designed to educate the
318 state's citizens and visitors about the importance of litter
319 prevention and shall include approaches and techniques to remove

320 litter from the state's shorelines.
321 (3) For the purposes of this section, the term "shoreline"
322 includes, but is not limited to, beaches, rivershores, and
323 lakeshores.
324 Section 5. Subsection (28) of section 320.08058, Florida
325 Statutes, is amended to read:
326 320.08058 Specialty license plates.--
327 (28) FLORIDA WILDFLOWER LICENSE PLATES.--
328 (a) The department shall develop a Florida Wildflower
329 license plate as provided in this section. The word "Florida"
330 must appear at the top of the plate, and the words "State
331 Wildflower" and "coreopsis" must appear at the bottom of the
332 plate.
333 (b) The annual use fees shall be distributed to the
334 Department of Agriculture and Consumer Services, to be used for
335 the purposes set forth in ~~Wildflower Account established by Keep~~
336 ~~Florida Beautiful, Inc., created by~~ s. 403.4131. The proceeds
337 must be used to establish native Florida wildflower research
338 programs, wildflower educational programs, and wildflower grant
339 programs to municipal, county, and community-based groups in this
340 state. A maximum of 10 percent of the proceeds from the sale of
341 such plates may be used for administrative costs.
342 Section 6. All unexpended proceeds of fees paid for
343 Wildflower license plates which are held by Keep Florida
344 Beautiful, Inc., must be transferred to the Department of
345 Agriculture and Consumer Services promptly after the effective
346 date of this act.
347 Section 7. Section 403.703, Florida Statutes, is amended to
348 read:

349 (Substantial rewording of section. See
350 s. 403.703, F.S., for present text.)
351 403.703 Definitions.--As used in this part, the term:
352 (1) "Ash residue" has the same meaning as in the department
353 rule governing solid waste combustors which defines the term.
354 (2) "Biological waste" means solid waste that causes or has
355 the capability of causing disease or infection and includes, but
356 is not limited to, biomedical waste, diseased or dead animals,
357 and other wastes capable of transmitting pathogens to humans or
358 animals. The term does not include human remains that are
359 disposed of by persons licensed under chapter 497.
360 (3) "Biomedical waste" means any solid waste or liquid
361 waste that may present a threat of infection to humans. The term
362 includes, but is not limited to, nonliquid human tissue and body
363 parts; laboratory and veterinary waste that contains human-
364 disease-causing agents; discarded disposable sharps; human blood
365 and human blood products and body fluids; and other materials
366 that in the opinion of the Department of Health represent a
367 significant risk of infection to persons outside the generating
368 facility. The term does not include human remains that are
369 disposed of by persons licensed under chapter 497.
370 (4) "Clean debris" means any solid waste that is virtually
371 inert, that is not a pollution threat to groundwater or surface
372 waters, that is not a fire hazard, and that is likely to retain
373 its physical and chemical structure under expected conditions of
374 disposal or use. The term includes uncontaminated concrete,
375 including embedded pipe or steel, brick, glass, ceramics, and
376 other wastes designated by the department.
377 (5) "Closure" means the cessation of operation of a solid

378 waste management facility and the act of securing such facility
379 so that it will pose no significant threat to human health or the
380 environment and includes long-term monitoring and maintenance of
381 a facility if required by department rule.
382 (6) "Construction and demolition debris" means discarded
383 materials generally considered to be not water-soluble and
384 nonhazardous in nature, including, but not limited to, steel,
385 glass, brick, concrete, asphalt roofing material, pipe, gypsum
386 wallboard, and lumber, from the construction or destruction of a
387 structure as part of a construction or demolition project or from
388 the renovation of a structure, and includes rocks, soils, tree
389 remains, trees, and other vegetative matter that normally results
390 from land clearing or land-development operations for a
391 construction project, including such debris from construction of
392 structures at a site remote from the construction or demolition
393 project site. Mixing of construction and demolition debris with
394 other types of solid waste will cause the resulting mixture to be
395 classified as other than construction and demolition debris. The
396 term also includes:
397 (a) Clean cardboard, paper, plastic, wood, and metal scraps
398 from a construction project.
399 (b) Except as provided in s. 403.707(9)(j), yard trash and
400 unpainted, nontreated wood scraps from sources other than
401 construction or demolition projects.
402 (c) Scrap from manufacturing facilities which is the type
403 of material generally used in construction projects and which
404 would meet the definition of construction and demolition debris
405 if it were generated as part of a construction or demolition
406 project. This includes debris from the construction of

407 manufactured homes and scrap shingles, wallboard, siding
408 concrete, and similar materials from industrial or commercial
409 facilities.
410 (d) De minimis amounts of other nonhazardous wastes that
411 are generated at construction or destruction projects, provided
412 such amounts are consistent with best management practices of the
413 industry.
414 (7) "County," or any like term, means a political
415 subdivision of the state established pursuant to s. 1, Art. VIII
416 of the State Constitution and, when s. 403.706(19) applies, means
417 a special district or other entity.
418 (8) "Department" means the Department of Environmental
419 Protection or any successor agency performing a like function.
420 (9) "Disposal" means the discharge, deposit, injection,
421 dumping, spilling, leaking, or placing of any solid waste or
422 hazardous waste into or upon any land or water so that such solid
423 waste or hazardous waste or any constituent thereof may enter
424 other lands or be emitted into the air or discharged into any
425 waters, including groundwaters, or otherwise enter the
426 environment.
427 (10) "Generation" means the act or process of producing
428 solid or hazardous waste.
429 (11) "Guarantor" means any person, other than the owner or
430 operator, who provides evidence of financial responsibility for
431 an owner or operator under this part.
432 (12) "Hazardous substance" means any substance that is
433 defined as a hazardous substance in the United States
434 Comprehensive Environmental Response, Compensation, and Liability
435 Act of 1980, 94 Stat. 2767.

436 (13) "Hazardous waste" means solid waste, or a combination
437 of solid wastes, which, because of its quantity, concentration,
438 or physical, chemical, or infectious characteristics, may cause,
439 or significantly contribute to, an increase in mortality or an
440 increase in serious irreversible or incapacitating reversible
441 illness or may pose a substantial present or potential hazard to
442 human health or the environment when improperly transported,
443 disposed of, stored, treated, or otherwise managed. The term does
444 not include human remains that are disposed of by persons
445 licensed under chapter 497.
446 (14) "Hazardous waste facility" means any building, site,
447 structure, or equipment at or by which hazardous waste is
448 disposed of, stored, or treated.
449 (15) "Hazardous waste management" means the systematic
450 control of the collection, source separation, storage,
451 transportation, processing, treatment, recovery, recycling, and
452 disposal of hazardous wastes.
453 (16) "Land disposal" means any placement of hazardous waste
454 in or on the land and includes, but is not limited to, placement
455 in a landfill, surface impoundment, waste pile, injection well,
456 land treatment facility, salt bed formation, salt dome formation,
457 or underground mine or cave, or placement in a concrete vault or
458 bunker intended for disposal purposes.
459 (17) "Landfill" means any solid waste land disposal area
460 for which a permit, other than a general permit, is required by
461 s. 403.707 and which receives solid waste for disposal in or upon
462 land. The term does not include a landspreading site, an
463 injection well, a surface impoundment, or a facility for the
464 disposal of construction and demolition debris.

465 (18) "Manifest" means the recordkeeping system used for
466 identifying the concentration, quantity, composition, origin,
467 routing, and destination of hazardous waste during its
468 transportation from the point of generation to the point of
469 disposal, storage, or treatment.
470 (19) "Materials recovery facility" means a solid waste
471 management facility that provides for the extraction from solid
472 waste of recyclable materials, materials suitable for use as a
473 fuel or soil amendment, or any combination of such materials.
474 (20) "Municipality," or any like term, means a municipality
475 created pursuant to general or special law authorized or
476 recognized pursuant to s. 2 or s. 6, Art. VIII of the State
477 Constitution and, when s. 403.706(19) applies, means a special
478 district or other entity.
479 (21) "Operation," with respect to any solid waste
480 management facility, means the disposal, storage, or processing
481 of solid waste at and by the facility.
482 (22) "Person" means any and all persons, natural or
483 artificial, including any individual, firm, or association; any
484 municipal or private corporation organized or existing under the
485 laws of this state or any other state; any county of this state;
486 and any governmental agency of this state or the Federal
487 Government.
488 (23) "Processing" means any technique designed to change
489 the physical, chemical, or biological character or composition of
490 any solid waste so as to render it safe for transport; amenable
491 to recovery, storage, or recycling; safe for disposal; or reduced
492 in volume or concentration.
493 (24) "Recovered materials" means metal, paper, glass,

494 plastic, textile, or rubber materials that have known recycling
495 potential, can be feasibly recycled, and have been diverted and
496 source separated or have been removed from the solid waste stream
497 for sale, use, or reuse as raw materials, whether or not the
498 materials require subsequent processing or separation from each
499 other, but the term does not include materials destined for any
500 use that constitutes disposal. Recovered materials as described
501 in this subsection are not solid waste.
502 (25) "Recovered materials processing facility" means a
503 facility engaged solely in the storage, processing, resale, or
504 reuse of recovered materials. Such a facility is not a solid
505 waste management facility if it meets the conditions of s.
506 403.7045(1)(e).
507 (26) "Recyclable material" means those materials that are
508 capable of being recycled and that would otherwise be processed
509 or disposed of as solid waste.
510 (27) "Recycling" means any process by which solid waste, or
511 materials that would otherwise become solid waste, are collected,
512 separated, or processed and reused or returned to use in the form
513 of raw materials or products.
514 (28) "Resource recovery" means the process of recovering
515 materials or energy from solid waste, excluding those materials
516 or solid waste under the control of the Nuclear Regulatory
517 Commission.
518 (29) "Resource recovery equipment" means equipment or
519 machinery exclusively and integrally used in the actual process
520 of recovering material or energy resources from solid waste.
521 (30) "Sludge" includes the accumulated solids, residues,
522 and precipitates generated as a result of waste treatment or

523 processing, including wastewater treatment, water-supply
524 treatment, or operation of an air pollution control facility, and
525 mixed liquids and solids pumped from septic tanks, grease traps,
526 privies, or similar waste disposal appurtenances.
527 (31) "Solid waste" means sludge unregulated under the
528 federal Clean Water Act or Clean Air Act, sludge from a waste
529 treatment works, water supply treatment plant, or air pollution
530 control facility, or garbage, rubbish, refuse, special waste, or
531 other discarded material, including solid, liquid, semisolid, or
532 contained gaseous material resulting from domestic, industrial,
533 commercial, mining, agricultural, or governmental operations.
534 Recovered materials as defined in subsection (24) are not solid
535 waste.
536 (32) "Solid waste disposal facility" means any solid waste
537 management facility that is the final resting place for solid
538 waste, including landfills and incineration facilities that
539 produce ash from the process of incinerating municipal solid
540 waste.
541 (33) "Solid waste management" means the process by which
542 solid waste is collected, transported, stored, separated,
543 processed, or disposed of in any other way according to an
544 orderly, purposeful, and planned program, which includes closure.
545 (34) "Solid waste management facility" means any solid
546 waste disposal area, volume-reduction plant, transfer station,
547 materials recovery facility, or other facility, the purpose of
548 which is resource recovery or the disposal, recycling,
549 processing, or storage of solid waste. The term does not include
550 recovered materials processing facilities that meet the
551 requirements of s. 403.7046, except the portion of such

552 facilities, if any, which is used for the management of solid
553 waste.
554 (35) "Source separated" means that the recovered materials
555 are separated from solid waste at the location where the
556 recovered materials and solid waste are generated. The term does
557 not require that various types of recovered materials be
558 separated from each other, and recognizes de minimis solid waste,
559 in accordance with industry standards and practices, may be
560 included in the recovered materials. Materials are not considered
561 source-separated when two or more types of recovered materials
562 are deposited in combination with each other in a commercial
563 collection container located where the materials are generated
564 and when such materials contain more than 10 percent solid waste
565 by volume or weight. For purposes of this subsection, the term
566 "various types of recovered materials" means metals, paper,
567 glass, plastic, textiles, and rubber.
568 (36) "Special wastes" means solid wastes that can require
569 special handling and management, including, but not limited to,
570 white goods, waste tires, used oil, lead-acid batteries,
571 construction and demolition debris, ash residue, yard trash, and
572 biological wastes.
573 (37) "Storage" means the containment or holding of a
574 hazardous waste, either on a temporary basis or for a period of
575 years, in such a manner as not to constitute disposal of such
576 hazardous waste.
577 (38) "Transfer station" means a site the primary purpose of
578 which is to store or hold solid waste for transport to a
579 processing or disposal facility.
580 (39) "Transport" means the movement of hazardous waste from

581 the point of generation or point of entry into the state to any
582 offsite intermediate points and to the point of offsite ultimate
583 disposal, storage, treatment, or exit from the state.
584 (40) "Treatment," when used in connection with hazardous
585 waste, means any method, technique, or process, including
586 neutralization, which is designed to change the physical,
587 chemical, or biological character or composition of any hazardous
588 waste so as to neutralize it or render it nonhazardous, safe for
589 transport, amenable to recovery, amenable to storage or disposal,
590 or reduced in volume or concentration. The term includes any
591 activity or processing that is designed to change the physical
592 form or chemical composition of hazardous waste so as to render
593 it nonhazardous.
594 (41) "Volume reduction plant" includes incinerators,
595 pulverizers, compactors, shredding and baling plants, composting
596 plants, and other plants that accept and process solid waste for
597 recycling or disposal.
598 (42) "White goods" includes inoperative and discarded
599 refrigerators, ranges, water heaters, freezers, and other similar
600 domestic and commercial large appliances.
601 (43) "Yard trash" means vegetative matter resulting from
602 landscaping maintenance and land clearing operations and includes
603 associated rocks and soils.
604 Section 8. Subsection (69) of section 316.003, Florida
605 Statutes, is amended to read:
606 316.003 Definitions.--The following words and phrases, when
607 used in this chapter, shall have the meanings respectively
608 ascribed to them in this section, except where the context
609 otherwise requires:

610 (69) HAZARDOUS MATERIAL.--Any substance or material which
611 has been determined by the secretary of the United States
612 Department of Transportation to be capable of imposing an
613 unreasonable risk to health, safety, and property. This term
614 includes hazardous waste as defined in s. 403.703(13) ~~s.~~
615 ~~403.703(21)~~.
616 Section 9. Paragraph (f) of subsection (2) of section
617 377.709, Florida Statutes, is amended to read:
618 377.709 Funding by electric utilities of local governmental
619 solid waste facilities that generate electricity.--
620 (2) DEFINITIONS.--As used in this section, the term:
621 (f) "Solid waste facility" means a facility owned or
622 operated by, or on behalf of, a local government for the purpose
623 of disposing of solid waste, as that term is defined in s.
624 403.703(31) ~~s. 403.703(13)~~, by any process that produces heat and
625 incorporates, as a part of the facility, the means of converting
626 heat to electrical energy in amounts greater than actually
627 required for the operation of the facility.
628 Section 10. Subsection (1) of section 487.048, Florida
629 Statutes, is amended to read:
630 487.048 Dealer's license; records.--
631 (1) Each person holding or offering for sale, selling, or
632 distributing restricted-use pesticides shall obtain a dealer's
633 license from the department. Application for the license shall be
634 made on a form prescribed by the department. The license must be
635 obtained before entering into business or transferring ownership
636 of a business. The department may require examination or other
637 proof of competency of individuals to whom licenses are issued or
638 of individuals employed by persons to whom licenses are issued.

639 Demonstration of continued competency may be required for license
640 renewal, as set by rule. The license shall be renewed annually as
641 provided by rule. An annual license fee not exceeding $250 shall
642 be established by rule. However, a user of a restricted-use
643 pesticide may distribute unopened containers of a properly
644 labeled pesticide to another user who is legally entitled to use
645 that restricted-use pesticide without obtaining a pesticide
646 dealer's license. The exclusive purpose of distribution of the
647 restricted-use pesticide is to keep it from becoming a hazardous
648 waste as defined in s. 403.703(13) ~~s. 403.703(21)~~.
649 Section 11. Section 403.704, Florida Statutes, is amended
650 to read:
651 403.704 Powers and duties of the department.--The
652 department shall have responsibility for the implementation and
653 enforcement of the provisions of this act. In addition to other
654 powers and duties, the department shall:
655 (1) Develop and implement, in consultation with local
656 governments, a state solid waste management program, as defined
657 in s. 403.705~~, and update the program at least every 3 years~~. ~~In~~
658 ~~developing rules to implement the state solid waste management~~
659 ~~program, the department shall hold public hearings around the~~
660 ~~state and shall give notice of such public hearings to all local~~
661 ~~governments and regional planning agencies.~~
662 (2) Provide technical assistance to counties,
663 municipalities, and other persons, and cooperate with appropriate
664 federal agencies and private organizations in carrying out the
665 provisions of this act.
666 (3) Promote the planning and application of recycling and
667 resource recovery systems which preserve and enhance the quality

668 of the air, water, and other natural resources of the state and
669 assist in and encourage, where appropriate, the development of
670 regional solid waste management facilities.
671 (4) Serve as the official state representative for all
672 purposes of the federal Solid Waste Disposal Act, as amended by
673 Pub. L. No. 91-512, or as subsequently amended.
674 (5) Use private industry or the State University System
675 through contractual arrangements for implementation of some or
676 all of the requirements of the state solid waste management
677 program and for such other activities as may be considered
678 necessary, desirable, or convenient.
679 (6) Encourage recycling and resource recovery as a source
680 of energy and materials.
681 (7) Assist in and encourage, as much as possible, the
682 development within the state of industries and commercial
683 enterprises which are based upon resource recovery, recycling,
684 and reuse of solid waste.
685 ~~(8) Charge reasonable fees for any services it performs~~
686 ~~pursuant to this act, provided user fees shall apply uniformly~~
687 ~~within each municipality or county to all users who are provided~~
688 ~~with solid waste management services.~~
689 ~~(9) Acquire, at its discretion, personal or real property~~
690 ~~or any interest therein by gift, lease, or purchase for the~~
691 ~~purpose of providing sites for solid waste management facilities.~~
692 ~~(10) Acquire, construct, reconstruct, improve, maintain,~~
693 ~~equip, furnish, and operate, at its discretion, such solid waste~~
694 ~~management facilities as are called for by the state solid waste~~
695 ~~management program.~~
696 ~~(11) Receive funds or revenues from the sale of products,~~

697 ~~materials, fuels, or energy in any form derived from processing~~
698 ~~of solid waste by state-owned or state-operated facilities, which~~
699 ~~funds or revenues shall be deposited into the Solid Waste~~
700 ~~Management Trust Fund.~~
701 (8) ~~(12)~~ Determine by rule the facilities, equipment,
702 personnel, and number of monitoring wells to be provided at each
703 ~~Class I~~ solid waste disposal area.
704 ~~(13) Encourage, but not require, as part of a Class II~~
705 ~~solid waste disposal area, a potable water supply; an employee~~
706 ~~shelter; handwashing and toilet facilities; equipment washout~~
707 ~~facilities; electric service for operations and repairs;~~
708 ~~equipment shelter for maintenance and storage of parts,~~
709 ~~equipment, and tools; scales for weighing solid waste received at~~
710 ~~the disposal area; a trained equipment operator in full-time~~
711 ~~attendance during operating hours; and communication facilities~~
712 ~~for use in emergencies. The department may require an attendant~~
713 ~~at a Class II solid waste disposal area during the hours of~~
714 ~~operation if the department affirmatively demonstrates that such~~
715 ~~a requirement is necessary to prevent unlawful fires,~~
716 ~~unauthorized dumping, or littering of nearby property.~~
717 ~~(14) Require a Class II solid waste disposal area to have~~
718 ~~at least one monitoring well which shall be placed adjacent to~~
719 ~~the site in the direction of groundwater flow unless otherwise~~
720 ~~exempted by the department. The department may require additional~~
721 ~~monitoring wells not farther than 1 mile from the site if it is~~
722 ~~affirmatively demonstrated by the department that a significant~~
723 ~~change in the initial quality of the water has occurred in the~~
724 ~~downstream monitoring well which adversely affects the beneficial~~
725 ~~uses of the water. These wells may be public or private water~~

726 ~~supply wells if they are suitable for use in determining~~
727 ~~background water quality levels.~~
728 (9) ~~(15)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54
729 to implement and enforce the provisions of this act, including
730 requirements for the classification, construction, operation,
731 maintenance, and closure of solid waste management facilities and
732 requirements for, and conditions on, solid waste disposal in this
733 state, whether such solid waste is generated within this state or
734 outside this state as long as such requirements and conditions
735 are not based on the out-of-state origin of the waste and are
736 consistent with applicable provisions of law. When classifying
737 solid waste management facilities, the department shall consider
738 the hydrogeology of the site for the facility, the types of
739 wastes to be handled by the facility, and methods used to control
740 the types of waste to be handled by the facility and shall seek
741 to minimize the adverse effects of solid waste management on the
742 environment. Whenever the department adopts any rule stricter or
743 more stringent than one which has been set by the United States
744 Environmental Protection Agency, the procedures set forth in s.
745 403.804(2) shall be followed. The department shall not, however,
746 adopt hazardous waste rules for solid waste for which special
747 studies were required prior to October 1, 1988, under s. 8002 of
748 the Resource Conservation and Recovery Act, 42 U.S.C. s. 6982, as
749 amended, until the studies are completed by the United States
750 Environmental Protection Agency and the information is available
751 to the department for consideration in adopting its own rule.
752 (10) ~~(16)~~ Issue or modify permits on such conditions as are
753 necessary to effect the intent and purposes of this act, and may
754 deny or revoke permits.

755 ~~(17) Conduct research, using the State University System,~~
756 ~~solid waste professionals from local governments, private~~
757 ~~enterprise, and other organizations, on alternative, economically~~
758 ~~feasible, cost-effective, and environmentally safe solid waste~~
759 ~~management and landfill closure methods which protect the health,~~
760 ~~safety, and welfare of the public and the environment and which~~
761 ~~may assist in developing markets and provide economic benefits to~~
762 ~~local governments, the state, and its citizens, and solicit~~
763 ~~public participation during the research process. The department~~
764 ~~shall incorporate such cost-effective landfill closure methods in~~
765 ~~the appropriate department rule as alternative closure~~
766 ~~requirements.~~
767 (11) ~~(18)~~ Develop and implement or contract for services to
768 develop information on recovered materials markets and strategies
769 for market development and expansion for use of these materials.
770 Additionally, the department shall maintain a directory of
771 recycling businesses operating in the state and shall serve as a
772 coordinator to match recovered materials with markets. Such
773 directory shall be made available to the public and to local
774 governments to assist with their solid waste management
775 activities.
776 ~~(19) Authorize variances from solid waste closure rules~~
777 ~~adopted pursuant to this part, provided such variances are~~
778 ~~applied for and approved in accordance with s. 403.201 and will~~
779 ~~not result in significant threats to human health or the~~
780 ~~environment.~~
781 (12) ~~(20)~~ Establish accounts and deposit to the Solid Waste
782 Management Trust Fund and control and administer moneys it may
783 withdraw from the fund.

784 (13) ~~(21)~~ Manage a program of grants, using funds from the
785 Solid Waste Management Trust Fund and funds provided by the
786 Legislature for solid waste management, for programs for
787 recycling, composting, litter control, and special waste
788 management and for programs which provide for the safe and proper
789 management of solid waste.
790 (14) ~~(22)~~ Budget and receive appropriated funds and accept,
791 receive, and administer grants or other funds or gifts from
792 public or private agencies, including the state and the Federal
793 Government, for the purpose of carrying out the provisions of
794 this act.
795 (15) ~~(23)~~ Delegate its powers, enter into contracts, or take
796 such other actions as may be necessary to implement this act.
797 (16) ~~(24)~~ Receive and administer funds appropriated for
798 county hazardous waste management assessments.
799 (17) ~~(25)~~ Provide technical assistance to local governments
800 and regional agencies to ensure consistency between county
801 hazardous waste management assessments; coordinate the
802 development of such assessments with the assistance of the
803 appropriate regional planning councils; and review and make
804 recommendations to the Legislature relative to the sufficiency of
805 the assessments to meet state hazardous waste management needs.
806 (18) ~~(26)~~ Increase public education and public awareness of
807 solid and hazardous waste issues by developing and promoting
808 statewide programs of litter control, recycling, volume
809 reduction, and proper methods of solid waste and hazardous waste
810 management.
811 (19) ~~(27)~~ Assist the hazardous waste storage, treatment, or
812 disposal industry by providing to the industry any data produced

813 on the types and quantities of hazardous waste generated.
814 (20) ~~(28)~~ Institute a hazardous waste emergency response
815 program which would include emergency telecommunication
816 capabilities and coordination with appropriate agencies.
817 (21) ~~(29)~~ Promulgate rules necessary to accept delegation of
818 the hazardous waste management program from the Environmental
819 Protection Agency under the Hazardous and Solid Waste Amendments
820 of 1984, Pub. L. No. 98-616.
821 (22) ~~(30)~~ Adopt rules, if necessary, to address the
822 incineration and disposal of biomedical waste and the management
823 of biological waste within the state, whether such waste is
824 generated within this state or outside this state, as long as
825 such requirements and conditions are not based on the out-of-
826 state origin of the waste and are consistent with applicable
827 provisions of law.
828 Section 12. Section 403.7043, Florida Statutes, is amended
829 to read:
830 403.7043 Compost standards and applications.--
831 (1) In order to protect the state's land and water
832 resources, compost produced, utilized, or disposed of by the
833 composting process at solid waste management facilities in the
834 state must meet criteria established by the department.
835 (2) The department shall ~~Within 6 months after October 1,~~
836 ~~1988, the department shall initiate rulemaking to~~ establish and
837 maintain rules addressing standards for the production of compost
838 ~~and shall complete and promulgate those rules within 12 months~~
839 ~~after initiating the process of rulemaking~~, including rules
840 establishing:
841 (a) Requirements necessary to produce hygienically safe

842 compost products for varying applications.
843 (b) A classification scheme for compost based on~~:~~ the types
844 of waste composted, ~~including at least one type containing only~~
845 ~~yard trash;~~ the maturity of the compost, ~~including at least three~~
846 ~~degrees of decomposition for fresh, semimature, and mature;~~ and
847 the levels of organic and inorganic constituents in the compost.
848 This scheme shall address:
849 1. Methods for measurement of the compost maturity.
850 2. Particle sizes.
851 3. Moisture content.
852 4. Average levels of organic and inorganic constituents,
853 including heavy metals, for such classes of compost as the
854 department establishes, and the analytical methods to determine
855 those levels.
856 ~~(3) Within 6 months after October 1, 1988, the department~~
857 ~~shall initiate rulemaking to prescribe the allowable uses and~~
858 ~~application rates of compost and shall complete and promulgate~~
859 ~~those rules within 12 months after initiating the process of~~
860 ~~rulemaking, based on the following criteria:~~
861 ~~(a) The total quantity of organic and inorganic~~
862 ~~constituents, including heavy metals, allowed to be applied~~
863 ~~through the addition of compost to the soil per acre per year.~~
864 ~~(b) The allowable uses of compost based on maturity and~~
865 ~~type of compost.~~
866 ~~(4) If compost is produced which does not meet the criteria~~
867 ~~prescribed by the department for agricultural and other use, the~~
868 ~~compost must be reprocessed or disposed of in a manner approved~~
869 ~~by the department, unless a different application is specifically~~
870 ~~permitted by the department.~~

871 ~~(5) The provisions of s. 403.706 shall not prohibit any~~
872 ~~county or municipality which has in place a memorandum of~~
873 ~~understanding or other written agreement as of October 1, 1988,~~
874 ~~from proceeding with plans to build a compost facility.~~
875 Section 13. Subsections (1), (2), and (3) of section
876 403.7045, Florida Statutes, are amended to read:
877 403.7045 Application of act and integration with other
878 acts.--
879 (1) The following wastes or activities shall not be
880 regulated pursuant to this act:
881 (a) Byproduct material, source material, and special
882 nuclear material, the generation, transportation, disposal,
883 storage, or treatment of which is regulated under chapter 404 or
884 under the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat.
885 923, as amended;
886 (b) Suspended solids and dissolved materials in domestic
887 sewage effluent or irrigation return flows or other discharges
888 which are point sources subject to permits pursuant to provisions
889 of this chapter or pursuant to s. 402 of the Clean Water Act,
890 Pub. L. No. 95-217;
891 (c) Emissions to the air from a stationary installation or
892 source regulated under provisions of this chapter or under the
893 Clean Air Act, Pub. L. No. 95-95;
894 (d) Drilling fluids, produced waters, and other wastes
895 associated with the exploration for, or development and
896 production of, crude oil or natural gas which are regulated under
897 chapter 377; or
898 (e) Recovered materials or recovered materials processing
899 facilities shall not be regulated pursuant to this act, except as

900 provided in s. 403.7046, if:
901 1. A majority of the recovered materials at the facility
902 are demonstrated to be sold, used, or reused within 1 year.
903 2. The recovered materials handled by the facility or the
904 products or byproducts of operations that process recovered
905 materials are not discharged, deposited, injected, dumped,
906 spilled, leaked, or placed into or upon any land or water by the
907 owner or operator of such facility so that such recovered
908 materials, products or byproducts, or any constituent thereof may
909 enter other lands or be emitted into the air or discharged into
910 any waters, including groundwaters, or otherwise enter the
911 environment such that a threat of contamination in excess of
912 applicable department standards and criteria is caused.
913 3. The recovered materials handled by the facility are not
914 hazardous wastes as defined under s. 403.703, and rules
915 promulgated pursuant thereto.
916 4. The facility is registered as required in s. 403.7046.
917 (f) Industrial byproducts, if:
918 1. A majority of the industrial byproducts are demonstrated
919 to be sold, used, or reused within 1 year.
920 2. The industrial byproducts are not discharged, deposited,
921 injected, dumped, spilled, leaked, or placed upon any land or
922 water so that such industrial byproducts, or any constituent
923 thereof, may enter other lands or be emitted into the air or
924 discharged into any waters, including groundwaters, or otherwise
925 enter the environment such that a threat of contamination in
926 excess of applicable department standards and criteria <u>or a</u>
927 <u>significant threat to public health</u> is caused.
928 3. The industrial byproducts are not hazardous wastes as

929 defined under s. 403.703 and rules adopted under this section.
930 (2) Except as provided in s. 403.704(9) ~~s. 403.704(15)~~, the
931 following wastes shall not be regulated as a hazardous waste
932 pursuant to this act, except when determined by the United States
933 Environmental Protection Agency to be a hazardous waste:
934 (a) Ashes and scrubber sludges generated from the burning
935 of boiler fuel for generation of electricity or steam.
936 (b) Agricultural and silvicultural byproduct material and
937 agricultural and silvicultural process waste from normal farming
938 or processing.
939 (c) Discarded material generated by the mining and
940 beneficiation and chemical or thermal processing of phosphate
941 rock, and precipitates resulting from neutralization of phosphate
942 chemical plant process and nonprocess waters.
943 (3) The following wastes or activities shall be regulated
944 pursuant to this act in the following manner:
945 (a) Dredged material that is generated as part of a project
946 permitted under part IV of chapter 373 or chapter 161, or that is
947 authorized to be removed from sovereign submerged lands under
948 chapter 253, ~~Dredge spoil or fill material~~ shall be managed in
949 accordance with the conditions of that permit or authorization
950 unless the dredged material is regulated as hazardous waste
951 pursuant to this part ~~disposed of pursuant to a dredge and fill~~
952 ~~permit, but whenever hazardous components are disposed of within~~
953 ~~the dredge or fill material, the dredge and fill permits shall~~
954 ~~specify the specific hazardous wastes contained and the~~
955 ~~concentration of each such waste~~. If the dredged material
956 contains hazardous substances, the department may further ~~then~~
957 limit or restrict the sale or use of the dredged ~~dredge and fill~~

958 material and may specify such other conditions relative to this
959 material as are reasonably necessary to protect the public from
960 the potential hazards.
961 (b) Hazardous wastes that ~~which~~ are contained in artificial
962 recharge waters or other waters intentionally introduced into any
963 underground formation and that ~~which~~ are permitted pursuant to s.
964 373.106 shall also be handled in compliance with the requirements
965 and standards for disposal, storage, and treatment of hazardous
966 waste under this act.
967 (c) Solid waste or hazardous waste facilities that ~~which~~
968 are operated as a part of the normal operation of a power
969 generating facility and which are licensed by certification
970 pursuant to the Florida Electrical Power Plant Siting Act, ss.
971 403.501-403.518, shall undergo such certification subject to the
972 substantive provisions of this act.
973 (d) Biomedical waste and biological waste shall be disposed
974 of only as authorized by the department. However, any person who
975 unknowingly disposes into a sanitary landfill or waste-to-energy
976 facility any such waste that ~~which~~ has not been properly
977 segregated or separated from other solid wastes by the generating
978 facility is not guilty of a violation under this act. ~~Nothing in~~
979 This paragraph does not ~~shall be construed to~~ prohibit the
980 department from seeking injunctive relief pursuant to s. 403.131
981 to prohibit the unauthorized disposal of biomedical waste or
982 biological waste.
983 Section 14. Section 403.707, Florida Statutes, is amended
984 to read:
985 403.707 Permits.--
986 (1) A ~~No~~ solid waste management facility may not be

987 operated, maintained, constructed, expanded, modified, or closed
988 without an appropriate and currently valid permit issued by the
989 department. The department may, by rule, exempt specified types
990 of facilities from the requirement for a permit if it determines
991 that construction for operation of the facility is not expected
992 to create any significant threat to the environment or public
993 health. For purposes of this part, and only when specified by
994 department rule, a permit may include registrations as well as
995 other forms of licenses as defined in s. 120.52. Solid waste
996 construction permits issued under this section may include any
997 permit conditions necessary to achieve compliance with the
998 recycling requirements of this act. The department shall pursue
999 reasonable timeframes for closure and construction requirements,
1000 considering pending federal requirements and implementation costs
1001 to the permittee. The department shall adopt a rule establishing
1002 performance standards for construction and closure of solid waste
1003 management facilities. The standards shall allow flexibility in
1004 design and consideration for site-specific characteristics.
1005 (2) Except as provided in s. 403.722(6), no permit under
1006 this section is required for the following, provided that the
1007 activity shall not create a public nuisance or any condition
1008 adversely affecting the environment or public health and shall
1009 not violate other state or local laws, ordinances, rules,
1010 regulations, or orders:
1011 (a) Disposal by persons of solid waste resulting from their
1012 own activities on their own property, provided such waste is
1013 either ordinary household waste from their residential property
1014 or is rocks, soils, trees, tree remains, and other vegetative
1015 matter that ~~which~~ normally result from land development

1016 operations. Disposal of materials that ~~which~~ could create a
1017 public nuisance or adversely affect the environment or public
1018 health, such as: white goods; automotive materials, such as
1019 batteries and tires; petroleum products; pesticides; solvents; or
1020 hazardous substances, is not covered under this exemption.
1021 (b) Storage in containers by persons of solid waste
1022 resulting from their own activities on their property, leased or
1023 rented property, or property subject to a homeowners or
1024 maintenance association for which the person contributes
1025 association assessments, if the solid waste in such containers is
1026 collected at least once a week.
1027 (c) Disposal by persons of solid waste resulting from their
1028 own activities on their property, provided the environmental
1029 effects of such disposal on groundwater and surface waters are:
1030 1. Addressed or authorized by a site certification order
1031 issued under part II or a permit issued by the department
1032 pursuant to this chapter or rules adopted pursuant thereto; or
1033 2. Addressed or authorized by, or exempted from the
1034 requirement to obtain, a groundwater monitoring plan approved by
1035 the department.
1036 (d) Disposal by persons of solid waste resulting from their
1037 own activities on their own property, provided that such disposal
1038 occurred prior to October 1, 1988.
1039 (e) Disposal of solid waste resulting from normal farming
1040 operations as defined by department rule. Polyethylene
1041 agricultural plastic, damaged, nonsalvageable, untreated wood
1042 pallets, and packing material that cannot be feasibly recycled,
1043 which are used in connection with agricultural operations related
1044 to the growing, harvesting, or maintenance of crops, may be

1045 disposed of by open burning, provided that no public nuisance or
1046 any condition adversely affecting the environment or the public
1047 health is created thereby and that state or federal ambient air
1048 quality standards are not violated.
1049 (f) The use of clean debris as fill material in any area.
1050 However, this paragraph does not exempt any person from obtaining
1051 any other required permits, nor does it affect a person's
1052 responsibility to dispose of clean debris appropriately if it is
1053 not to be used as fill material.
1054 (g) Compost operations that produce less than 50 cubic
1055 yards of compost per year when the compost produced is used on
1056 the property where the compost operation is located.
1057 (3) All applicable provisions of ss. 403.087 and 403.088,
1058 relating to permits, apply to the control of solid waste
1059 management facilities.
1060 (4) When application for a construction permit for a Class
1061 I ~~or Class II~~ solid waste disposal area is made, it is the duty
1062 of the department to provide a copy of the application, within 7
1063 days after filing, to the water management district having
1064 jurisdiction where the area is to be located. The water
1065 management district may prepare an advisory report as to the
1066 impact on water resources. This report shall contain the
1067 district's recommendations as to the disposition of the
1068 application and shall be submitted to the department no later
1069 than 30 days prior to the deadline for final agency action by the
1070 department. However, the failure of the department or the water
1071 management district to comply with the provisions of this
1072 subsection shall not be the basis for the denial, revocation, or
1073 remand of any permit or order issued by the department.

1074 (5) The department may not issue a construction permit
1075 pursuant to this part for a new solid waste landfill within 3,000
1076 feet of Class I surface waters.
1077 (6) The department may issue a construction permit pursuant
1078 to this part only to a solid waste management facility that
1079 provides the conditions necessary to control the safe movement of
1080 wastes or waste constituents into surface or ground waters or the
1081 atmosphere and that will be operated, maintained, and closed by
1082 qualified and properly trained personnel. Such facility must if
1083 necessary:
1084 (a) Use natural or artificial barriers which are capable of
1085 controlling lateral or vertical movement of wastes or waste
1086 constituents into surface or ground waters.
1087 (b) Have a foundation or base that is capable of providing
1088 support for structures and waste deposits and capable of
1089 preventing foundation or base failure due to settlement,
1090 compression, or uplift.
1091 (c) Provide for the most economically feasible, cost-
1092 effective, and environmentally safe control of leachate, gas,
1093 stormwater, and disease vectors and prevent the endangerment of
1094 public health and the environment.
1095
1096 Open fires, air-curtain incinerators, or trench burning may not
1097 be used as a means of disposal at a solid waste management
1098 facility, unless permitted by the department under s. 403.087.
1099 (7) Prior to application for a construction permit, an
1100 applicant shall designate to the department temporary backup
1101 disposal areas or processes for the resource recovery facility.
1102 Failure to designate temporary backup disposal areas or processes

1103 shall result in a denial of the construction permit.
1104 (8) The department may refuse to issue a permit to an
1105 applicant who by past conduct in this state has repeatedly
1106 violated pertinent statutes, rules, or orders or permit terms or
1107 conditions relating to any solid waste management facility and
1108 who is deemed to be irresponsible as defined by department rule.
1109 For the purposes of this subsection, an applicant includes the
1110 owner or operator of the facility, or if the owner or operator is
1111 a business entity, a parent of a subsidiary corporation, a
1112 partner, a corporate officer or director, or a stockholder
1113 holding more than 50 percent of the stock of the corporation.
1114 ~~(9) Before or on the same day of filing with the department~~
1115 ~~of an application for any construction permit for the~~
1116 ~~incineration of biomedical waste which the department may require~~
1117 ~~by rule, the applicant shall notify each city and county within 1~~
1118 ~~mile of the facility of the filing of the application and shall~~
1119 ~~publish notice of the filing of the application. The applicant~~
1120 ~~shall publish a second notice of the filing within 14 days after~~
1121 ~~the date of filing. Each notice shall be published in a newspaper~~
1122 ~~of general circulation in the county in which the facility is~~
1123 ~~located or is proposed to be located. Notwithstanding the~~
1124 ~~provisions of chapter 50, for purposes of this section, a~~
1125 ~~"newspaper of general circulation" shall be the newspaper within~~
1126 ~~the county in which the installation or facility is proposed~~
1127 ~~which has the largest daily circulation in that county and has~~
1128 ~~its principal office in that county. If the newspaper with the~~
1129 ~~largest daily circulation has its principal office outside the~~
1130 ~~county, the notice shall appear in both the newspaper with the~~
1131 ~~largest daily circulation in that county, and a newspaper~~

1132 ~~authorized to publish legal notices in that county. The notice~~
1133 ~~shall contain:~~
1134 ~~(a) The name of the applicant and a brief description of~~
1135 ~~the facility and its location.~~
1136 ~~(b) The location of the application file and when it is~~
1137 ~~available for public inspection.~~
1138
1139 ~~The notice shall be prepared by the applicant and shall comply~~
1140 ~~with the following format:~~
1141
1142 ~~Notice of Application~~
1143
1144 ~~The Department of Environmental Protection announces receipt of~~
1145 ~~an application for a permit from (name of applicant) to (brief~~
1146 ~~description of project). This proposed project will be located at~~
1147 ~~(location) in (county) (city).~~
1148
1149 ~~This application is being processed and is available for public~~
1150 ~~inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,~~
1151 ~~Monday through Friday, except legal holidays, at (name and~~
1152 ~~address of office).~~
1153
1154 ~~(10) A permit, which the department may require by rule,~~
1155 ~~for the incineration of biomedical waste, may not be transferred~~
1156 ~~by the permittee to any other entity, except in conformity with~~
1157 ~~the requirements of this subsection.~~
1158 ~~(a) Within 30 days after the sale or legal transfer of a~~
1159 ~~permitted facility, the permittee shall file with the department~~
1160 ~~an application for transfer of the permits on such form as the~~

1161 ~~department shall establish by rule. The form must be completed~~
1162 ~~with the notarized signatures of both the transferring permittee~~
1163 ~~and the proposed permittee.~~
1164 ~~(b) The department shall approve the transfer of a permit~~
1165 ~~unless it determines that the proposed permittee has not provided~~
1166 ~~reasonable assurances that the proposed permittee has the~~
1167 ~~administrative, technical, and financial capability to properly~~
1168 ~~satisfy the requirements and conditions of the permit, as~~
1169 ~~determined by department rule. The determination shall be limited~~
1170 ~~solely to the ability of the proposed permittee to comply with~~
1171 ~~the conditions of the existing permit, and it shall not concern~~
1172 ~~the adequacy of the permit conditions. If the department proposes~~
1173 ~~to deny the transfer, it shall provide both the transferring~~
1174 ~~permittee and the proposed permittee a written objection to such~~
1175 ~~transfer together with notice of a right to request a proceeding~~
1176 ~~on such determination under chapter 120.~~
1177 ~~(c) Within 90 days after receiving a properly completed~~
1178 ~~application for transfer of a permit, the department shall issue~~
1179 ~~a final determination. The department may toll the time for~~
1180 ~~making a determination on the transfer by notifying both the~~
1181 ~~transferring permittee and the proposed permittee that additional~~
1182 ~~information is required to adequately review the transfer~~
1183 ~~request. Such notification shall be provided within 30 days after~~
1184 ~~receipt of an application for transfer of the permit, completed~~
1185 ~~pursuant to paragraph (a). If the department fails to take action~~
1186 ~~to approve or deny the transfer within 90 days after receipt of~~
1187 ~~the completed application or within 90 days after receipt of the~~
1188 ~~last item of timely requested additional information, the~~
1189 ~~transfer shall be deemed approved.~~

1190 ~~(d) The transferring permittee is encouraged to apply for a~~
1191 ~~permit transfer well in advance of the sale or legal transfer of~~
1192 ~~a permitted facility. However, the transfer of the permit shall~~
1193 ~~not be effective prior to the sale or legal transfer of the~~
1194 ~~facility.~~
1195 ~~(e) Until the transfer of the permit is approved by the~~
1196 ~~department, the transferring permittee and any other person~~
1197 ~~constructing, operating, or maintaining the permitted facility~~
1198 ~~shall be liable for compliance with the terms of the permit.~~
1199 ~~Nothing in this section shall relieve the transferring permittee~~
1200 ~~of liability for corrective actions that may be required as a~~
1201 ~~result of any violations occurring prior to the legal transfer of~~
1202 ~~the permit.~~
1203 ~~(11) The department shall review all permit applications~~
1204 ~~for any designated Class I solid waste disposal facility. As used~~
1205 ~~in this subsection, the term "designated Class I solid waste~~
1206 ~~disposal facility" means any facility that is, as of May 12,~~
1207 ~~1993, a solid waste disposal facility classified as an active~~
1208 ~~Class I landfill by the department, that is located in whole or~~
1209 ~~in part within 1,000 feet of the boundary of any municipality,~~
1210 ~~but that is not located within any county with an approved~~
1211 ~~charter or consolidated municipal government, is not located~~
1212 ~~within any municipality, and is not operated by a municipality.~~
1213 ~~The department shall not permit vertical expansion or horizontal~~
1214 ~~expansion of any designated Class I solid waste disposal facility~~
1215 ~~unless the application for such permit was filed before January~~
1216 ~~1, 1993, and no solid waste management facility may be operated~~
1217 ~~which is a vertical expansion or horizontal expansion of a~~
1218 ~~designated Class I solid waste disposal facility. As used in this~~

1219 ~~subsection, the term "vertical expansion" means any activity that~~
1220 ~~will result in an increase in the height of a designated Class I~~
1221 ~~solid waste disposal facility above 100 feet National Geodetic~~
1222 ~~Vertical Datum, except solely for closure, and the term~~
1223 ~~"horizontal expansion" means any activity that will result in an~~
1224 ~~increase in the ground area covered by a designated Class I solid~~
1225 ~~waste disposal facility, or if within 1 mile of a designated~~
1226 ~~Class I solid waste disposal facility, any new or expanded~~
1227 ~~operation of any solid waste disposal facility or area, or of~~
1228 ~~incineration of solid waste, or of storage of solid waste for~~
1229 ~~more than 1 year, or of composting of solid waste other than yard~~
1230 ~~trash.~~
1231 (9) ~~(12)~~ The department shall establish a separate category
1232 for solid waste management facilities which accept only
1233 construction and demolition debris for disposal or recycling. The
1234 department shall establish a reasonable schedule for existing
1235 facilities to comply with this section to avoid undue hardship to
1236 such facilities. However, a permitted solid waste disposal unit
1237 that ~~which~~ receives a significant amount of waste prior to the
1238 compliance deadline established in this schedule shall not be
1239 required to be retrofitted with liners or leachate control
1240 systems. Facilities accepting materials defined in s.
1241 403.703(6)(b) ~~s. 403.703(17)(b)~~ must implement a groundwater
1242 monitoring system adequate to detect contaminants that may
1243 reasonably be expected to result from such disposal prior to the
1244 acceptance of those materials.
1245 (a) The department shall establish reasonable construction,
1246 operation, monitoring, recordkeeping, financial assurance, and
1247 closure requirements for such facilities. The department shall

1248 take into account the nature of the waste accepted at various
1249 facilities when establishing these requirements, and may impose
1250 less stringent requirements, including a system of general
1251 permits or registration requirements, for facilities that accept
1252 only a segregated waste stream which is expected to pose a
1253 minimal risk to the environment and public health, such as clean
1254 debris. The Legislature recognizes that incidental amounts of
1255 other types of solid waste are commonly generated at construction
1256 or demolition projects. In any enforcement action taken pursuant
1257 to this section, the department shall consider the difficulty of
1258 removing these incidental amounts from the waste stream.
1259 (b) The department shall not require liners and leachate
1260 collection systems at individual facilities unless it
1261 demonstrates, based upon the types of waste received, the methods
1262 for controlling types of waste disposed of, the proximity of
1263 groundwater and surface water, and the results of the
1264 hydrogeological and geotechnical investigations, that the
1265 facility is reasonably expected to result in violations of
1266 groundwater standards and criteria otherwise.
1267 (c) The owner or operator shall provide financial assurance
1268 for closing of the facility in accordance with the requirements
1269 of s. 403.7125. The financial assurance shall cover the cost of
1270 closing the facility and 5 years of long-term care after closing,
1271 unless the department determines, based upon hydrogeologic
1272 conditions, the types of wastes received, or the groundwater
1273 monitoring results, that a different long-term care period is
1274 appropriate. However, unless the owner or operator of the
1275 facility is a local government, the escrow account described in
1276 s. 403.7125(2) ~~s. 403.7125(3)~~ may not be used as a financial

1277 assurance mechanism.
1278 (d) The department shall establish training requirements
1279 for operators of facilities, and shall work with the State
1280 University System or other providers to assure that adequate
1281 training courses are available. The department shall also assist
1282 the Florida Home Builders Association in establishing a component
1283 of its continuing education program to address proper handling of
1284 construction and demolition debris, including best management
1285 practices for reducing contamination of the construction and
1286 demolition debris waste stream.
1287 (e) The issuance of a permit under this subsection does not
1288 obviate the need to comply with all applicable zoning and land
1289 use regulations.
1290 (f) A permit is not required under this section for the
1291 disposal of construction and demolition debris on the property
1292 where it is generated, but such property must be covered, graded,
1293 and vegetated as necessary when disposal is complete.
1294 (g) It is the policy of the Legislature to encourage
1295 facilities to recycle. The department shall establish criteria
1296 and guidelines that encourage recycling where practical and
1297 provide for the use of recycled materials in a manner that
1298 protects the public health and the environment. Facilities are
1299 authorized to recycle, provided such activities do not conflict
1300 with such criteria and guidelines.
1301 (h) The department shall ensure that the requirements of
1302 this section are applied and interpreted consistently throughout
1303 the state. In accordance with s. 20.255, the Division of Waste
1304 Management shall direct the district offices and bureaus on
1305 matters relating to the interpretation and applicability of this

1306 section.
1307 (i) The department shall provide notice of receipt of a
1308 permit application for the initial construction of a construction
1309 and demolition debris disposal facility to the local governments
1310 having jurisdiction where the facility is to be located.
1311 (j) The Legislature recognizes that recycling, waste
1312 reduction, and resource recovery are important aspects of an
1313 integrated solid waste management program and as such are
1314 necessary to protect the public health and the environment. If
1315 necessary to promote such an integrated program, the county may
1316 determine, after providing notice and an opportunity for a
1317 hearing prior to December 31, 2006 ~~1996~~, that some or all of the
1318 wood material described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~
1319 shall be excluded from the definition of "construction and
1320 demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the
1321 jurisdiction of such county. The county may make such a
1322 determination only if it finds that, prior to June 1, 2006 ~~1996~~,
1323 the county has established an adequate method for the use or
1324 recycling of such wood material at an existing or proposed solid
1325 waste management facility that is permitted or authorized by the
1326 department on June 1, 2006 ~~1996~~. The county shall not be required
1327 to hold a hearing if the county represents that it previously has
1328 held a hearing for such purpose, nor shall the county be required
1329 to hold a hearing if the county represents that it previously has
1330 held a public meeting or hearing that authorized such method for
1331 the use or recycling of trash or other nonputrescible waste
1332 materials and if the county further represents that such
1333 materials include those materials described in s. 403.703(6)(b)
1334 ~~s. 403.703(17)(b)~~. The county shall provide written notice of its

1335 determination to the department by no later than December 31,
1336 2006 ~~1996~~; thereafter, the wood materials described in s.
1337 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall be excluded from the
1338 definition of "construction and demolition debris" in s.
1339 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction of such county.
1340 The county may withdraw or revoke its determination at any time
1341 by providing written notice to the department.
1342 (k) Brazilian pepper and other invasive exotic plant
1343 species as designated by the department resulting from
1344 eradication projects may be processed at permitted construction
1345 and demolition debris recycling facilities or disposed of at
1346 permitted construction and demolition debris disposal facilities
1347 or Class III facilities. The department may adopt rules to
1348 implement this paragraph.
1349 (10) ~~(13)~~ If the department and a local government
1350 independently require financial assurance for the closure of a
1351 privately owned solid waste management facility, the department
1352 and that local government shall enter into an interagency
1353 agreement that will allow the owner or operator to provide a
1354 single financial mechanism to cover the costs of closure ~~and any~~
1355 ~~required long term care~~. The financial mechanism may provide for
1356 the department and local government to be cobeneficiaries or
1357 copayees, but shall not impose duplicative financial requirements
1358 on the owner or operator. These closure costs must include at
1359 least the minimum required by department rules and must also
1360 include any additional costs required by local ordinance or
1361 regulation.
1362 (11) ~~(14)~~ Before or on the same day of filing with the
1363 department of an application for a permit to construct or

1364 substantially modify a solid waste management facility, the
1365 applicant shall notify the local government having jurisdiction
1366 over the facility of the filing of the application. The applicant
1367 also shall publish notice of the filing of the application in a
1368 newspaper of general circulation in the area where the facility
1369 will be located. Notice shall be given and published in
1370 accordance with applicable department rules. The department shall
1371 not issue the requested permit until the applicant has provided
1372 the department with proof that the notices required by this
1373 subsection have been given. Issuance of a permit does not relieve
1374 an applicant from compliance with local zoning or land use
1375 ordinances, or with any other law, rules, or ordinances.
1376 (12) ~~(15)~~ Construction and demolition debris must be
1377 separated from the solid waste stream and segregated in separate
1378 locations at a solid waste disposal facility or other permitted
1379 site.
1380 (13) ~~(16)~~ No facility, solely by virtue of the fact that it
1381 uses processed yard trash or clean wood or paper waste as a fuel
1382 source, shall be considered to be a solid waste disposal
1383 facility.
1384 Section 15. Section 403.7071, Florida Statutes, is created
1385 to read:
1386 403.7071 Management of storm-generated debris.--Solid waste
1387 generated as a result of a storm event that is the subject of an
1388 emergency order issued by the department may be managed as
1389 follows:
1390 (1) The Department of Environmental Protection may issue
1391 field authorizations for staging areas in those counties affected
1392 by a storm event. Such staging areas may be used for the

1393 temporary storage and management of storm-generated debris,
1394 including the chipping, grinding, or burning of vegetative
1395 debris. Field authorizations may be requested by providing a
1396 notice to the local office of the department containing a
1397 description of the design and operation of the staging area; the
1398 location of the staging area; and the name, address, and
1399 telephone number of the site manager. Field authorizations also
1400 may be issued by the department staff without prior notice.
1401 Written records of all field authorizations shall be created and
1402 maintained by department staff. Field authorizations may include
1403 specific conditions for the operation and closure of the staging
1404 area and shall include a required closure date. A local
1405 government shall avoid locating a staging area in wetlands and
1406 other surface waters to the greatest extent possible, and the
1407 area that is used or affected by a staging area must be fully
1408 restored upon cessation of use of the area.
1409 (2) Storm-generated vegetative debris managed at a staging
1410 area may be disposed of in a permitted lined or unlined landfill,
1411 a permitted land clearing debris facility, or a permitted
1412 construction and demolition debris disposal facility. Vegetative
1413 debris may also be managed at a permitted waste processing
1414 facility or a registered yard trash processing facility.
1415 (3) Construction and demolition debris that is mixed with
1416 other storm-generated debris need not be segregated from other
1417 solid waste prior to disposal in a lined landfill. Construction
1418 and demolition debris that is source-separated or is separated
1419 from other hurricane-generated debris at an authorized staging
1420 area, or at another area specifically authorized by the
1421 department, may be managed at a permitted construction and

1422 demolition debris disposal or recycling facility upon approval by
1423 the department of the methods and operational practices used to
1424 inspect the waste during segregation.
1425 (4) Unsalvageable refrigerators and freezers containing
1426 solid waste, such as rotting food, which may create a sanitary
1427 nuisance may be disposed of in a permitted lined landfill;
1428 however, chlorofluorocarbons and capacitors must be removed and
1429 recycled to the greatest extent practicable using techniques and
1430 personnel meeting relevant federal requirements.
1431 (5) Local governments may conduct the burning of storm-
1432 generated yard trash and other vegetative debris in air-curtain
1433 incinerators without prior notice to the department. Demolition
1434 debris may also be burned in air-curtain incinerators if the
1435 material is limited to untreated wood. Within 10 days after
1436 commencing such burning, the local government shall notify the
1437 department in writing describing the general nature of the
1438 materials burned; the location and method of burning; and the
1439 name, address, and telephone number of the representative of the
1440 local government to contact concerning the work. The operator of
1441 the air-curtain incinerator is subject to any requirement to
1442 obtain an open-burning authorization from the Division of
1443 Forestry or any other agency empowered to grant such
1444 authorization.
1445 Section 16. Section 403.708, Florida Statutes, is amended
1446 to read:
1447 403.708 Prohibition; penalty.--
1448 (1) No person shall:
1449 (a) Place or deposit any solid waste in or on the land or
1450 waters located within the state except in a manner approved by

1451 the department and consistent with applicable approved programs
1452 of counties or municipalities. However, nothing in this act shall
1453 be construed to prohibit the disposal of solid waste without a
1454 permit as provided in s. 403.707(2).
1455 (b) Burn solid waste except in a manner prescribed by the
1456 department and consistent with applicable approved programs of
1457 counties or municipalities.
1458 (c) Construct, alter, modify, or operate a solid waste
1459 management facility or site without first having obtained from
1460 the department any permit required by s. 403.707.
1461 (2) No beverage shall be sold or offered for sale within
1462 the state in a beverage container designed and constructed so
1463 that the container is opened by detaching a metal ring or tab.
1464 (3) For purposes of subsections (2), (9), and (10):
1465 ~~(a) "Degradable," with respect to any material, means that~~
1466 ~~such material, after being discarded, is capable of decomposing~~
1467 ~~to components other than heavy metals or other toxic substances,~~
1468 ~~after exposure to bacteria, light, or outdoor elements.~~
1469 (a) ~~(b)~~ "Beverage" means soda water, carbonated natural or
1470 mineral water, or other nonalcoholic carbonated drinks; soft
1471 drinks, whether or not carbonated; beer, ale, or other malt drink
1472 of whatever alcoholic content; or a mixed wine drink or a mixed
1473 spirit drink.
1474 (b) ~~(c)~~ "Beverage container" means an airtight container
1475 which at the time of sale contains 1 gallon or less of a
1476 beverage, or the metric equivalent of 1 gallon or less, and which
1477 is composed of metal, plastic, or glass or a combination thereof.
1478 (4) The Division of Alcoholic Beverages and Tobacco of the
1479 Department of Business and Professional Regulation may impose a

1480 fine of not more than $100 on any person currently licensed
1481 pursuant to s. 561.14 for each violation of the provisions of
1482 subsection (2). If the violation is of a continuing nature, each
1483 day during which such violation occurs shall constitute a
1484 separate and distinct offense and shall be subject to a separate
1485 fine.
1486 (5) The Department of Agriculture and Consumer Services may
1487 impose a fine of not more than $100 on any person not currently
1488 licensed pursuant to s. 561.14 for each violation of the
1489 provisions of subsection (2). If the violation is of a continuing
1490 nature, each day during which such violation occurs shall
1491 constitute a separate and distinct offense and shall be subject
1492 to a separate fine.
1493 (6) Fifty percent of each fine collected pursuant to
1494 subsections (4) and (5) shall be deposited into the Solid Waste
1495 Management Trust Fund. The balance of fines collected pursuant to
1496 subsection (4) shall be deposited into the Alcoholic Beverage and
1497 Tobacco Trust Fund for the use of the division for inspection and
1498 enforcement of the provisions of this section. The balance of
1499 fines collected pursuant to subsection (5) shall be deposited
1500 into the General Inspection Trust Fund for the use of the
1501 Department of Agriculture and Consumer Services for inspection
1502 and enforcement of the provisions of this section.
1503 (7) The Division of Alcoholic Beverages and Tobacco and the
1504 Department of Agriculture and Consumer Services shall coordinate
1505 their responsibilities under the provisions of this section to
1506 ensure that inspections and enforcement are accomplished in an
1507 efficient, cost-effective manner.
1508 (8) A person may not distribute, sell, or expose for sale

1509 in this state any plastic bottle or rigid container intended for
1510 single use unless such container has a molded label indicating
1511 the plastic resin used to produce the plastic container. The
1512 label must appear on or near the bottom of the plastic container
1513 product and be clearly visible. This label must consist of a
1514 number placed inside a triangle and letters placed below the
1515 triangle. The triangle must be equilateral and must be formed by
1516 three arrows, and, in the middle of each arrow, there must be a
1517 rounded bend that forms one apex of the triangle. The pointer, or
1518 arrowhead, of each arrow must be at the midpoint of a side of the
1519 triangle, and a short gap must separate each pointer from the
1520 base of the adjacent arrow. The three curved arrows that form the
1521 triangle must depict a clockwise path around the code number.
1522 Plastic bottles of less than 16 ounces, rigid plastic containers
1523 of less than 8 ounces, and plastic casings on lead-acid storage
1524 batteries are not required to be labeled under this section. The
1525 numbers and letters must be as follows:
1526 (a) For polyethylene terephthalate, the letters "PETE" and
1527 the number 1.
1528 (b) For high-density polyethylene, the letters "HDPE" and
1529 the number 2.
1530 (c) For vinyl, the letter "V" and the number 3.
1531 (d) For low-density polyethylene, the letters "LDPE" and
1532 the number 4.
1533 (e) For polypropylene, the letters "PP" and the number 5.
1534 (f) For polystyrene, the letters "PS" and the number 6.
1535 (g) For any other, the letters "OTHER" and the number 7.
1536 (9) No person shall distribute, sell, or expose for sale in
1537 this state any product packaged in a container or packing

1538 material manufactured with fully halogenated chlorofluorocarbons
1539 (CFC). Producers of containers or packing material manufactured
1540 with chlorofluorocarbons (CFC) are urged to introduce alternative
1541 packaging materials which are environmentally compatible.
1542 (10) The packaging of products manufactured or sold in the
1543 state may not be controlled by governmental rule, regulation, or
1544 ordinance adopted after March 1, 1974, other than as expressly
1545 provided in this act.
1546 (11) Violations of this part or rules, regulations,
1547 permits, or orders issued thereunder by the department and
1548 violations of approved local programs of counties or
1549 municipalities or rules, regulations, or orders issued thereunder
1550 shall be punishable by a civil penalty as provided in s. 403.141.
1551 (12) The department or any county or municipality may also
1552 seek to enjoin the violation of, or enforce compliance with, this
1553 part or any program adopted hereunder as provided in s. 403.131.
1554 (13) In accordance with the following schedule, no person
1555 who knows or who should know of the nature of such solid waste
1556 shall dispose of such solid waste in landfills:
1557 (a) Lead-acid batteries~~, after January 1, 1989~~. Lead-acid
1558 batteries also may ~~shall~~ not be disposed of in any waste-to-
1559 energy facility ~~after January 1, 1989~~. To encourage proper
1560 collection and recycling, all persons who sell lead-acid
1561 batteries at retail shall accept used lead-acid batteries as
1562 trade-ins for new lead-acid batteries.
1563 (b) Used oil~~, after October 1, 1988~~.
1564 (c) Yard trash~~, after January 1, 1992,~~ except in lined
1565 ~~unlined~~ landfills classified by department rule as Class I
1566 landfills. Yard trash that is source separated from solid waste

1567 may be accepted at a solid waste disposal area where the area
1568 provides and maintains separate yard trash composting facilities.
1569 The department recognizes that incidental amounts of yard trash
1570 may be disposed of in Class I ~~lined~~ landfills. In any enforcement
1571 action taken pursuant to this paragraph, the department shall
1572 consider the difficulty of removing incidental amounts of yard
1573 trash from a mixed solid waste stream.
1574 (d) White goods~~, after January 1, 1990~~.
1575
1576 ~~Prior to the effective dates specified in paragraphs (a)-(d), the~~
1577 ~~department shall identify and assist in developing alternative~~
1578 ~~disposal, processing, or recycling options for the solid wastes~~
1579 ~~identified in paragraphs (a)-(d).~~
1580 Section 17. Section 403.709, Florida Statutes, is amended
1581 to read:
1582 403.709 Solid Waste Management Trust Fund; use of waste
1583 tire fees.--There is created the Solid Waste Management Trust
1584 Fund, to be administered by the department.
1585 (1) ~~From~~ The annual revenues deposited in the trust fund,
1586 unless otherwise specified in the General Appropriations Act,
1587 shall be used for the following purposes:
1588 (a) ~~(1)~~ ~~Up to 40 percent shall be used for~~ Funding solid
1589 waste activities of the department and other state agencies, such
1590 as providing technical assistance to local governments and the
1591 private sector, performing solid waste regulatory and enforcement
1592 functions, preparing solid waste documents, and implementing
1593 solid waste education programs.
1594 (b) ~~(2)~~ ~~Up to 4.5 percent shall be used for~~ Funding research
1595 and training programs relating to solid waste management through

1596 the Center for Solid and Hazardous Waste Management and other
1597 organizations which can reasonably demonstrate the capability to
1598 carry out such projects.
1599 (c) ~~(3) Up to 11 percent shall be used for~~ Funding to
1600 supplement any other funds provided to the Department of
1601 Agriculture and Consumer Services for mosquito control. This
1602 distribution shall be annually transferred to the General
1603 Inspection Trust Fund in the Department of Agriculture and
1604 Consumer Services to be used for mosquito control, especially
1605 control of West Nile Virus.
1606 (d) ~~(4) Up to 4.5 percent shall be used for~~ Funding to the
1607 Department of Transportation for litter prevention and control
1608 programs ~~coordinated by Keep Florida Beautiful, Inc~~.
1609 (e) ~~(5) A minimum of 40 percent shall be used for~~ Funding a
1610 competitive and innovative grant program pursuant to s. 403.7095
1611 for activities relating to recycling and reducing the volume of
1612 municipal solid waste, including waste tires requiring final
1613 disposal.
1614 (2) ~~(6)~~ The department shall recover to the use of the fund
1615 from the site owner or the person responsible for the
1616 accumulation of tires at the site, jointly and severally, all
1617 sums expended from the fund pursuant to this section to manage
1618 tires at an illegal waste tire site, except that the department
1619 may decline to pursue such recovery if it finds the amount
1620 involved too small or the likelihood of recovery too uncertain.
1621 If a court determines that the owner is unable or unwilling to
1622 comply with the rules adopted pursuant to this section or s.
1623 403.717, the court may authorize the department to take
1624 possession and control of the waste tire site in order to protect

1625 the health, safety, and welfare of the community and the
1626 environment.
1627 (3) ~~(7)~~ The department may impose a lien on the real
1628 property on which the waste tire site is located and the waste
1629 tires equal to the estimated cost to bring the tire site into
1630 compliance, including attorney's fees and court costs. Any owner
1631 whose property has such a lien imposed may release her or his
1632 property from any lien claimed under this subsection by filing
1633 with the clerk of the circuit court a cash or surety bond,
1634 payable to the department in the amount of the estimated cost of
1635 bringing the tire site into compliance with department rules,
1636 including attorney's fees and court costs, or the value of the
1637 property after the abatement action is complete, whichever is
1638 less. No lien provided by this subsection shall continue for a
1639 period longer than 4 years after the completion of the abatement
1640 action unless within that time an action to enforce the lien is
1641 commenced in a court of competent jurisdiction. The department
1642 may take action to enforce the lien in the same manner used for
1643 construction liens under part I of chapter 713.
1644 (4) ~~(8)~~ This section does not limit the use of other
1645 remedies available to the department.
1646 Section 18. Subsection (5) of section 403.7095, Florida
1647 Statutes, is amended to read:
1648 403.7095 Solid waste management grant program.--
1649 (5) From the funds made available pursuant to s.
1650 403.709(1)(e) ~~s. 403.709(5)~~ for the grant program created by this
1651 section, the following distributions shall be made:
1652 (a) Up to 15 percent for the program described in
1653 subsection (1);

1654 (b) Up to 35 percent for the program described in
1655 subsection (3); and
1656 (c) Up to 50 percent for the program described in
1657 subsection (4).
1658 Section 19. Section 403.7125, Florida Statutes, is amended
1659 to read:
1660 403.7125 Financial assurance for closure ~~Landfill~~
1661 ~~management escrow account~~.--
1662 ~~(1) As used in this section:~~
1663 ~~(a) "Landfill" means any solid waste land disposal area for~~
1664 ~~which a permit, other than a general permit, is required by s.~~
1665 ~~403.707 that receives solid waste for disposal in or upon land~~
1666 ~~other than a land spreading site, injection well, or a surface~~
1667 ~~impoundment.~~
1668 ~~(b) "Closure" means the ceasing operation of a landfill and~~
1669 ~~securing such landfill so that it does not pose a significant~~
1670 ~~threat to public health or the environment and includes long-term~~
1671 ~~monitoring and maintenance of a landfill.~~
1672 ~~(c) "Owner or operator" means, in addition to the usual~~
1673 ~~meanings of the term, any owner of record of any interest in land~~
1674 ~~whereon a landfill is or has been located and any person or~~
1675 ~~corporation which owns a majority interest in any other~~
1676 ~~corporation which is the owner or operator of a landfill.~~
1677 (1) ~~(2)~~ Every owner or operator of a landfill is jointly and
1678 severally liable for the improper operation and closure of the
1679 landfill, as provided by law. As used in this section, the term
1680 "owner or operator" means any owner of record of any interest in
1681 land wherein a landfill is or has been located and any person or
1682 corporation that owns a majority interest in any other

1683 corporation that is the owner or operator of a landfill.
1684 (2) ~~(3)~~ The owner or operator of a landfill owned or
1685 operated by a local or state government or the Federal Government
1686 shall establish a fee, or a surcharge on existing fees or other
1687 appropriate revenue-producing mechanism, to ensure the
1688 availability of financial resources for the proper closure of the
1689 landfill. However, the disposal of solid waste by persons on
1690 their own property, as described in s. 403.707(2), is exempt from
1691 the provisions of this section.
1692 (a) The revenue-producing mechanism must produce revenue at
1693 a rate sufficient to generate funds to meet state and federal
1694 landfill closure requirements.
1695 (b) The revenue shall be deposited in an interest-bearing
1696 escrow account to be held and administered by the owner or
1697 operator. The owner or operator shall file with the department an
1698 annual audit of the account. The audit shall be conducted by an
1699 independent certified public accountant. Failure to collect or
1700 report such revenue, except as allowed in subsection (3) ~~(4)~~, is
1701 a noncriminal violation punishable by a fine of not more than
1702 $5,000 for each offense. The owner or operator may make
1703 expenditures from the account and its accumulated interest only
1704 for the purpose of landfill closure and, if such expenditures do
1705 not deplete the fund to the detriment of eventual closure, for
1706 planning and construction of resource recovery or landfill
1707 facilities. Any moneys remaining in the account after paying for
1708 proper and complete closure, as determined by the department,
1709 shall, if the owner or operator does not operate a landfill, be
1710 deposited by the owner or operator into the general fund or the
1711 appropriate solid waste fund of the local government of

1712 jurisdiction.
1713 (c) The revenue generated under this subsection and any
1714 accumulated interest thereon may be applied to the payment of, or
1715 pledged as security for, the payment of revenue bonds issued in
1716 whole or in part for the purpose of complying with state and
1717 federal landfill closure requirements. Such application or pledge
1718 may be made directly in the proceedings authorizing such bonds or
1719 in an agreement with an insurer of bonds to assure such insurer
1720 of additional security therefor.
1721 (d) The provisions of s. 212.055 that relate to raising of
1722 revenues for landfill closure or long-term maintenance do not
1723 relieve a landfill owner or operator from the obligations of this
1724 section.
1725 (e) The owner or operator of any landfill that had
1726 established an escrow account in accordance with this section and
1727 the conditions of its permit prior to January 1, 2006, may
1728 continue to use that escrow account to provide financial
1729 assurance for closure of that landfill, even if that landfill is
1730 not owned or operated by a local or state government or the
1731 Federal Government.
1732 (3) ~~(4)~~ An owner or operator of a landfill owned or operated
1733 by a local or state government or by the Federal Government may
1734 provide financial assurance to ~~establish proof of financial~~
1735 ~~responsibility with~~ the department in lieu of the requirements of
1736 subsection (2) ~~(3)~~. An owner or operator of any other landfill,
1737 or any other solid waste management facility designated by
1738 department rule, shall provide financial assurance to the
1739 department for the closure of the facility. Such financial
1740 assurance ~~proof~~ may include surety bonds, certificates of

1741 deposit, securities, letters of credit, or other documents
1742 showing that the owner or operator has sufficient financial
1743 resources to cover, at a minimum, the costs of complying with
1744 applicable ~~landfill~~ closure requirements. The owner or operator
1745 shall estimate such costs to the satisfaction of the department.
1746 (4) ~~(5)~~ This section does not repeal, limit, or abrogate any
1747 other law authorizing local governments to fix, levy, or charge
1748 rates, fees, or charges for the purpose of complying with state
1749 and federal landfill closure requirements.
1750 (5) ~~(6)~~ The department shall adopt rules to implement this
1751 section.
1752 Section 20. Section 403.716, Florida Statutes, is amended
1753 to read:
1754 403.716 Training of operators of solid waste management and
1755 other facilities.--
1756 (1) The department shall establish qualifications for, and
1757 encourage the development of training programs for, operators of
1758 landfills, coordinators of local recycling programs, ~~operators of~~
1759 ~~waste to energy facilities, biomedical waste incinerators, and~~
1760 ~~mobile soil thermal treatment units or facilities,~~ and operators
1761 of other solid waste management facilities.
1762 (2) The department shall work with accredited community
1763 colleges, career centers, state universities, and private
1764 institutions in developing educational materials, courses of
1765 study, and other such information to be made available for
1766 persons seeking to be trained as operators of solid waste
1767 management facilities.
1768 (3) A person may not perform the duties of an operator of a
1769 landfill~~, or perform the duties of an operator of a waste to-~~

1770 ~~energy facility, biomedical waste incinerator, or mobile soil~~
1771 ~~thermal treatment unit or facility,~~ unless she or he has
1772 completed an operator training course approved by the department
1773 or she or he has qualified as an interim operator in compliance
1774 with requirements established by the department by rule. An owner
1775 of a landfill~~, waste-to-energy facility, biomedical waste~~
1776 ~~incinerator, or mobile soil thermal treatment unit or facility~~
1777 may not employ any person to perform the duties of an operator
1778 unless such person has completed an approved landfill~~, waste-to-~~
1779 ~~energy facility, biomedical waste incinerator, or mobile soil~~
1780 ~~thermal treatment unit or facility~~ operator training course, as
1781 appropriate, or has qualified as an interim operator in
1782 compliance with requirements established by the department by
1783 rule. The department may establish by rule operator training
1784 requirements for other solid waste management facilities and
1785 facility operators.
1786 (4) The department has authority to adopt minimum standards
1787 and other rules pursuant to ss. 120.536(1) and 120.54 to
1788 implement the provisions of this section. The department shall
1789 ensure the safe, healthy, and lawful operation of solid waste
1790 management facilities in this state. The department may establish
1791 by rule various classifications for operators to cover the need
1792 for differing levels of training required to operate various
1793 types of solid waste management facilities due to different
1794 operating requirements at such facilities.
1795 (5) For purposes of this section, the term "operator" means
1796 any person, including the owner, who is principally engaged in,
1797 and is in charge of, the actual operation, supervision, and
1798 maintenance of a solid waste management facility and includes the

1799 person in charge of a shift or period of operation during any
1800 part of the day.
1801 Section 21. Section 403.717, Florida Statutes, is amended
1802 to read:
1803 403.717 Waste tire and lead-acid battery requirements.--
1804 (1) For purposes of this section and ss. 403.718 and
1805 403.7185:
1806 (a) "Department" means the Department of Environmental
1807 Protection.
1808 (b) "Motor vehicle" means an automobile, motorcycle, truck,
1809 trailer, semitrailer, truck tractor and semitrailer combination,
1810 or any other vehicle operated in this state, used to transport
1811 persons or property and propelled by power other than muscular
1812 power, but the term does not include traction engines, road
1813 rollers, such vehicles as run only upon a track, bicycles,
1814 mopeds, or farm tractors and trailers.
1815 (c) "Tire" means a continuous solid or pneumatic rubber
1816 covering encircling the wheel of a motor vehicle.
1817 (d) "Waste tire" means a tire that has been removed from a
1818 motor vehicle and has not been retreaded or regrooved. "Waste
1819 tire" includes, but is not limited to, used tires and processed
1820 tires. <u>The term does not include solid rubber tires and tires</u>
1821 <u>that are inseparable from the rim.</u>
1822 (e) "Waste tire collection center" means a site where waste
1823 tires are collected from the public prior to being offered for
1824 recycling and where fewer than 1,500 tires are kept on the site
1825 on any given day.
1826 (f) "Waste tire processing facility" means a site where
1827 equipment is used to <u>treat waste tires mechanically, chemically,</u>

1828 or thermally so that the resulting material is a marketable
1829 product or is suitable for proper disposal ~~recapture reusable~~
1830 ~~byproducts from waste tires or to cut, burn, or otherwise alter~~
1831 ~~waste tires so that they are no longer whole~~. The term includes
1832 mobile waste tire processing equipment.
1833 (g) "Waste tire site" means a site at which 1,500 or more
1834 waste tires are accumulated.
1835 (h) "Lead-acid battery" means a ~~those~~ lead-acid battery
1836 ~~batteries~~ designed for use in motor vehicles, vessels, and
1837 aircraft, and includes such batteries when sold new as a
1838 component part of a motor vehicle, vessel, or aircraft, but not
1839 when sold to recycle components.
1840 (i) "Indoor" means within a structure that ~~which~~ excludes
1841 rain and public access and would control air flows in the event
1842 of a fire.
1843 (j) "Processed tire" means a tire that has been treated
1844 mechanically, chemically, or thermally so that the resulting
1845 material is a marketable product or is suitable for proper
1846 disposal.
1847 (k) "Used tire" means a waste tire which has a minimum
1848 tread depth of 3/32 inch or greater and is suitable for use on a
1849 motor vehicle.
1850 (2) The owner or operator of any waste tire site shall
1851 provide the department with information concerning the site's
1852 location, size, and the approximate number of waste tires that
1853 are accumulated at the site and shall initiate steps to comply
1854 with subsection (3).
1855 (3)(a) A person may not maintain a waste tire site unless
1856 such site is:

1857 1. An integral part of the person's permitted waste tire
1858 processing facility; or
1859 2. Used for the storage of waste tires prior to processing
1860 and is located at a permitted solid waste management facility.
1861 (b) It is unlawful for any person to dispose of waste tires
1862 or processed tires in the state except at a permitted solid waste
1863 management facility. Collection or storage of waste tires at a
1864 permitted waste tire processing facility or waste tire collection
1865 center prior to processing or use does not constitute disposal,
1866 provided that the collection and storage complies with rules
1867 established by the department.
1868 (c) Whole waste tires may not be deposited in a landfill as
1869 a method of ultimate disposal.
1870 (d) A person may not contract with a waste tire collector
1871 for the transportation, disposal, or processing of waste tires
1872 unless the collector is registered with the department or exempt
1873 from requirements provided under this section. Any person who
1874 contracts with a waste tire collector for the transportation of
1875 more than 25 waste tires per month from a single business
1876 location must maintain records for that location and make them
1877 available for review by the department or by law enforcement
1878 officers, which records must contain the date when the tires were
1879 transported, the quantity of tires, the registration number of
1880 the collector, and the name of the driver.
1881 (4) The department shall adopt rules to carry out the
1882 provisions of this section and s. 403.718. Such rules shall:
1883 (a) Provide for the administration or revocation of waste
1884 tire processing facility permits, including mobile processor
1885 permits;

1886 (b) Provide for the administration or revocation of waste
1887 tire collector registrations, the fees for which may not exceed
1888 $50 per vehicle registered annually;
1889 (c) Provide for the administration or revocation of waste
1890 tire collection center permits, the fee for which may not exceed
1891 $250 annually;
1892 (d) Set standards, including financial assurance standards,
1893 for waste tire processing facilities and associated waste tire
1894 sites, waste tire collection centers, waste tire collectors, and
1895 for the storage of waste tires and processed tires, including
1896 storage indoors;
1897 (e) The department may by rule exempt not-for-hire waste
1898 tire collectors and processing facilities from financial
1899 assurance requirements;
1900 (f) Authorize the final disposal of waste tires at a
1901 permitted solid waste disposal facility provided the tires have
1902 been cut into sufficiently small parts to assure their proper
1903 disposal; and
1904 (g) Allow waste tire material which has been cut into
1905 sufficiently small parts to be used as daily cover material for a
1906 landfill.
1907 ~~(5) A permit is not required for tire storage at:~~
1908 ~~(a) A tire retreading business where fewer than 1,500 waste~~
1909 ~~tires are kept on the business premises;~~
1910 ~~(b) A business that, in the ordinary course of business,~~
1911 ~~removes tires from motor vehicles if fewer than 1,500 of these~~
1912 ~~tires are kept on the business premises; or~~
1913 ~~(c) A retail tire selling business which is serving as a~~
1914 ~~waste tire collection center if fewer than 1,500 waste tires are~~

1915 ~~kept on the business premises.~~
1916 (5) ~~(6)~~ (a) The department shall encourage the voluntary
1917 establishment of waste tire collection centers at retail tire-
1918 selling businesses, waste tire processing facilities, and solid
1919 waste disposal facilities, to be open to the public for the
1920 deposit of waste tires.
1921 (b) The department is authorized to establish an incentives
1922 program for individuals to encourage them to return their waste
1923 tires to a waste tire collection center. The incentives used by
1924 the department may involve the use of discount or prize coupons,
1925 prize drawings, promotional giveaways, or other activities the
1926 department determines will promote collection, reuse, volume
1927 reduction, and proper disposal of waste tires.
1928 (c) The department may contract with a promotion company to
1929 administer the incentives program.
1930 Section 22. Section 403.7221, Florida Statutes, is
1931 transferred, renumbered as section 403.70715, Florida Statutes,
1932 and amended to read:
1933 403.70715 ~~403.7221~~ Research, development, and demonstration
1934 permits.--
1935 (1) The department may issue a research, development, and
1936 demonstration permit to the owner or operator of any solid waste
1937 management facility, including any hazardous waste management
1938 facility, who proposes to utilize an innovative and experimental
1939 solid waste treatment technology or process for which permit
1940 standards have not been promulgated. Permits shall:
1941 (a) Provide for construction and operation of the facility
1942 for not longer than 3 years ~~1 year~~, renewable no more than 3
1943 times.

1944 (b) Provide for the receipt and treatment by the facility
1945 of only those types and quantities of solid waste which the
1946 department deems necessary for purposes of determining the
1947 performance capabilities of the technology or process and the
1948 effects of such technology or process on human health and the
1949 environment.
1950 (c) Include requirements the department deems necessary
1951 which may include monitoring, operation, testing, financial
1952 responsibility, closure, and remedial action.
1953 (2) The department may apply the criteria set forth in this
1954 section in establishing the conditions of each permit without
1955 separate establishment of rules implementing such criteria.
1956 (3) For the purpose of expediting review and issuance of
1957 permits under this section, the department may, consistent with
1958 the protection of human health and the environment, modify or
1959 waive permit application and permit issuance requirements, except
1960 that there shall be no modification or waiver of regulations
1961 regarding financial responsibility or of procedures established
1962 regarding public participation.
1963 (4) The department may order an immediate termination of
1964 all operations at the facility at any time upon a determination
1965 that termination is necessary to protect human health and the
1966 environment.
1967 Section 23. Subsection (2) of section 403.201, Florida
1968 Statutes, is amended to read:
1969 403.201 Variances.--
1970 (2) No variance shall be granted from any provision or
1971 requirement concerning discharges of waste into waters of the
1972 state or hazardous waste management which would result in the

1973 provision or requirement being less stringent than a comparable
1974 federal provision or requirement, except as provided in s.
1975 403.70715 ~~s. 403.7221~~.
1976 Section 24. Section 403.722, Florida Statutes, is amended
1977 to read:
1978 403.722 Permits; hazardous waste disposal, storage, and
1979 treatment facilities.--
1980 (1) Each person who intends to or is required to construct,
1981 modify, operate, or close a hazardous waste disposal, storage, or
1982 treatment facility shall obtain a construction permit, operation
1983 permit, postclosure permit, clean closure plan approval, or
1984 corrective action permit from the department prior to
1985 constructing, modifying, operating, or closing the facility. By
1986 rule, the department may provide for the issuance of a single
1987 permit instead of any two or more hazardous waste facility
1988 permits.
1989 (2) Any owner or operator of a hazardous waste facility in
1990 operation on the effective date of the department rule listing
1991 and identifying hazardous wastes shall file an application for a
1992 temporary operation permit within 6 months after the effective
1993 date of such rule. The department, upon receipt of a properly
1994 completed application, shall identify any department rules which
1995 are being violated by the facility and shall establish a
1996 compliance schedule. However, if the department determines that
1997 an imminent hazard exists, the department may take any necessary
1998 action pursuant to s. 403.726 to abate the hazard. The department
1999 shall issue a temporary operation permit to such facility within
2000 the time constraints of s. 120.60 upon submission of a properly
2001 completed application which is in conformance with this

2002 subsection. Temporary operation permits for such facilities shall
2003 be issued for up to 3 years only. Upon termination of the
2004 temporary operation permit and upon proper application by the
2005 facility owner or operator, the department shall issue an
2006 operation permit for such existing facilities if the applicant
2007 has corrected all of the deficiencies identified in the temporary
2008 operation permit and is in compliance with all other rules
2009 adopted pursuant to this act.
2010 (3) ~~Permit~~ Applicants shall provide any information that
2011 ~~which~~ will enable the department to determine that the proposed
2012 construction, modification, operation, ~~or~~ closure, or corrective
2013 action will comply with this act and any applicable rules. In no
2014 instance shall any person construct, modify, operate, or close a
2015 facility or perform corrective actions at a facility in
2016 contravention of the standards, requirements, or criteria for a
2017 hazardous waste facility. Authorizations ~~Permits~~ issued under
2018 this section may include any permit conditions necessary to
2019 achieve compliance with applicable hazardous waste rules and
2020 necessary to protect human health and the environment.
2021 (4) The department may require, in an ~~a permit~~ application,
2022 submission of information concerning matters specified in s.
2023 403.721(6) as well as information respecting:
2024 (a) Estimates of the composition, quantity, and
2025 concentration of any hazardous waste identified or listed under
2026 this act or combinations of any such waste and any other solid
2027 waste~~,~~ proposed to be disposed of, treated, transported, or
2028 stored and the time, frequency, or rate at which such waste is
2029 proposed to be disposed of, treated, transported, or stored; and
2030 (b) The site to which such hazardous waste or the products

2031 of treatment of such hazardous waste will be transported and at
2032 which it will be disposed of, treated, or stored.
2033 (5) An authorization ~~A permit~~ issued pursuant to this
2034 section is not a vested right. The department may revoke or
2035 modify any such authorization ~~permit~~.
2036 (a) Authorizations ~~Permits~~ may be revoked for failure of
2037 the holder to comply with the provisions of this act, the terms
2038 of the authorization ~~permit~~, the standards, requirements, or
2039 criteria adopted pursuant to this act, or an order of the
2040 department; for refusal by the holder to allow lawful inspection;
2041 for submission by the holder of false or inaccurate information
2042 in the permit application; or if necessary to protect the public
2043 health or the environment.
2044 (b) Authorizations ~~Permits~~ may be modified, upon request of
2045 the holder ~~permittee~~, if such modification is not in violation of
2046 this act or department rules or if the department finds the
2047 modification necessary to enable the facility to remain in
2048 compliance with this act and department rules.
2049 (c) An owner or operator of a hazardous waste facility in
2050 existence on the effective date of a department rule changing an
2051 exemption or listing and identifying the hazardous wastes that
2052 ~~which~~ require that facility to be permitted who notifies the
2053 department pursuant to s. 403.72, and who has applied for a
2054 permit pursuant to subsection (2), may continue to operate until
2055 ~~be~~ issued a temporary operation permit. If such owner or operator
2056 intends to or is required to discontinue operation, the temporary
2057 operation permit must include final closure conditions.
2058 (6) A hazardous waste facility permit issued pursuant to
2059 this section shall satisfy the permit requirements of s.

2060 403.707(1). The permit exemptions provided in s. 403.707(2) shall
2061 not apply to hazardous waste.
2062 (7) The department may establish ~~permit~~ application
2063 procedures for hazardous waste facilities, which procedures may
2064 vary based on differences in amounts, types, and concentrations
2065 of hazardous waste and on differences in the size and location of
2066 facilities and which procedures may take into account permitting
2067 procedures of other laws not in conflict with this act.
2068 (8) For authorizations ~~permits~~ required by this section,
2069 the department may require that a fee be paid and may establish,
2070 by rule, a fee schedule based on the degree of hazard and the
2071 amount and type of hazardous waste disposed of, stored, or
2072 treated at the facility.
2073 (9) It shall not be a requirement for the issuance of ~~such~~
2074 a hazardous waste authorization ~~permit~~ that the facility complies
2075 with an adopted local government comprehensive plan, local land
2076 use ordinances, zoning ordinances or regulations, or other local
2077 ordinances. However, such an authorization ~~a permit~~ issued by the
2078 department shall not override adopted local government
2079 comprehensive plans, local land use ordinances, zoning ordinances
2080 or regulations, or other local ordinances.
2081 (10) Notwithstanding ss. 120.60(1) and 403.815:
2082 (a) The time specified by law for permit review shall be
2083 tolled by the request of the department for publication of notice
2084 of proposed agency action to issue a permit for a hazardous waste
2085 treatment, storage, or disposal facility and shall resume 45 days
2086 after receipt by the department of proof of publication. If,
2087 within 45 days after publication of the notice of the proposed
2088 agency action, the department receives written notice of

2089 opposition to the intention of the agency to issue such permit
2090 and receives a request for a hearing, the department shall
2091 provide for a hearing pursuant to ss. 120.569 and 120.57, if
2092 requested by a substantially affected party, or an informal
2093 public meeting, if requested by any other person. The failure to
2094 request a hearing within 45 days after publication of the notice
2095 of the proposed agency action constitutes a waiver of the right
2096 to a hearing under ss. 120.569 and 120.57. The permit review time
2097 period shall continue to be tolled until the completion of such
2098 hearing or meeting and shall resume within 15 days after
2099 conclusion of a public hearing held on the application or within
2100 45 days after the recommended order is submitted to the agency
2101 and the parties, whichever is later.
2102 (b) Within 60 days after receipt of an application for a
2103 hazardous waste facility permit, the department shall examine the
2104 application, notify the applicant of any apparent errors or
2105 omissions, and request any additional information the department
2106 is permitted by law to require. The failure to correct an error
2107 or omission or to supply additional information shall not be
2108 grounds for denial of the permit unless the department timely
2109 notified the applicant within the 60-day period, except that this
2110 paragraph does not prevent the department from denying an
2111 application if the department does not possess sufficient
2112 information to ensure that the facility is in compliance with
2113 applicable statutes and rules.
2114 (c) The department shall approve or deny each hazardous
2115 waste facility permit within 135 days after receipt of the
2116 original application or after receipt of the requested additional
2117 information or correction of errors or omissions. However, the

2118 failure of the department to approve or deny within the 135-day
2119 time period does not result in the automatic approval or denial
2120 of the permit and does not prevent the inclusion of specific
2121 permit conditions which are necessary to ensure compliance with
2122 applicable statutes and rules. If the department fails to approve
2123 or deny the permit within the 135-day period, the applicant may
2124 petition for a writ of mandamus to compel the department to act
2125 consistently with applicable regulatory requirements.
2126 (11) Hazardous waste facility operation permits shall be
2127 issued for no more than 5 years.
2128 (12) On the same day of filing with the department of an
2129 application for a permit for the construction modification, or
2130 operation of a hazardous waste facility, the applicant shall
2131 notify each city and county within 1 mile of the facility of the
2132 filing of the application and shall publish notice of the filing
2133 of the application. The applicant shall publish a second notice
2134 of the filing within 14 days after the date of filing. Each
2135 notice shall be published in a newspaper of general circulation
2136 in the county in which the facility is located or is proposed to
2137 be located. Notwithstanding the provisions of chapter 50, for
2138 purposes of this section, a "newspaper of general circulation"
2139 shall be the newspaper within the county in which the
2140 installation or facility is proposed which has the largest daily
2141 circulation in that county and has its principal office in that
2142 county. If the newspaper with the largest daily circulation has
2143 its principal office outside the county, the notice shall appear
2144 in both the newspaper with the largest daily circulation in that
2145 county, and a newspaper authorized to publish legal notices in
2146 that county. The notice shall contain:

2147 (a) The name of the applicant and a brief description of
2148 the project and its location.
2149 (b) The location of the application file and when it is
2150 available for public inspection.
2151
2152 The notice shall be prepared by the applicant and shall comply
2153 with the following format:
2154
2155 Notice of Application
2156
2157 The Department of Environmental Protection announces receipt of
2158 an application for a permit from (name of applicant) to (brief
2159 description of project). This proposed project will be located at
2160 (location) in (county) (city).
2161
2162 This application is being processed and is available for public
2163 inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,
2164 Monday through Friday, except legal holidays, at (name and
2165 address of office).
2166
2167 (13) A permit for the construction, modification, or
2168 operation of a hazardous waste facility which initially was
2169 issued under authority of this section, may not be transferred by
2170 the permittee to any other entity, except in conformity with the
2171 requirements of this subsection.
2172 (a) At least 30 days prior to the sale or legal transfer of
2173 a permitted facility, the permittee shall file with the
2174 department an application for transfer of the permits on such
2175 form as the department shall establish by rule. The form must be

2176 completed with the notarized signatures of both the transferring
2177 permittee and the proposed permittee.
2178 (b) The department shall approve the transfer of a permit
2179 unless it determines that the proposed permittee has not provided
2180 reasonable assurances that the proposed permittee has the
2181 administrative, technical, and financial capability to properly
2182 satisfy the requirements and conditions of the permit, as
2183 determined by department rule. The determination shall be limited
2184 solely to the ability of the proposed permittee to comply with
2185 the conditions of the existing permit, and it shall not concern
2186 the adequacy of the permit conditions. If the department proposes
2187 to deny the transfer, it shall provide both the transferring
2188 permittee and the proposed permittee a written objection to such
2189 transfer together with notice of a right to request a proceeding
2190 on such determination under chapter 120.
2191 (c) Within 90 days after receiving a properly completed
2192 application for transfer of permit, the department shall issue a
2193 final determination. The department may toll the time for making
2194 a determination on the transfer by notifying both the
2195 transferring permittee and the proposed permittee that additional
2196 information is required to adequately review the transfer
2197 request. Such notification shall be served within 30 days after
2198 receipt of an application for transfer of permit, completed
2199 pursuant to paragraph (a). However, the failure of the department
2200 to approve or deny within the 90-day time period does not result
2201 in the automatic approval or denial of the transfer. If the
2202 department fails to approve or deny the transfer within the 90-
2203 day period, the applicant may petition for a writ of mandamus to
2204 compel the department to act consistently with applicable

2205 regulatory requirements.
2206 (d) The transferring permittee is encouraged to apply for a
2207 permit transfer well in advance of the sale or legal transfer of
2208 a permitted facility. However, the transfer or the permit shall
2209 not be effective prior to the sale or legal transfer of the
2210 facility.
2211 (e) Until the transfer of the permit is approved by the
2212 department, the transferring permittee and any other person
2213 constructing, operating, or maintaining the permitted facility
2214 shall be liable for compliance with the terms of the permit.
2215 Nothing in this section shall relieve the transferring permittee
2216 of liability for corrective actions that may be required as a
2217 result of any violations occurring prior to the legal transfer of
2218 the permit.
2219 Section 25. Subsection (2) of section 403.7226, Florida
2220 Statutes, is amended to read:
2221 403.7226 Technical assistance by the department.--The
2222 department shall:
2223 (2) Identify short-term needs and long-term needs for
2224 hazardous waste management for the state on the basis of the
2225 information gathered through the local hazardous waste management
2226 assessments and other information from state and federal
2227 regulatory agencies and sources. The state needs assessment must
2228 be ongoing and must be updated when new data concerning waste
2229 generation and waste management technologies become available.
2230 ~~The department shall annually send a copy of this assessment to~~
2231 ~~the Governor and to the Legislature.~~
2232 Section 26. Subsection (3) of section 403.724, Florida
2233 Statutes, is amended to read:

2234 403.724 Financial responsibility.--
2235 (3) The amount of financial responsibility required shall
2236 be approved by the department upon each issuance, renewal, or
2237 modification of a hazardous waste facility authorization ~~permit~~.
2238 Such factors as inflation rates and changes in operation may be
2239 considered when approving financial responsibility for the
2240 duration of the authorization ~~permit~~. The Office of Insurance
2241 Regulation of the Department of Financial Services ~~Commission~~
2242 shall be available to assist the department in making this
2243 determination. In approving or modifying the amount of financial
2244 responsibility, the department shall consider:
2245 (a) The amount and type of hazardous waste involved;
2246 (b) The probable damage to human health and the
2247 environment;
2248 (c) The danger and probable damage to private and public
2249 property near the facility;
2250 (d) The probable time that the hazardous waste and facility
2251 involved will endanger the public health, safety, and welfare or
2252 the environment; and
2253 (e) The probable costs of properly closing the facility and
2254 performing corrective action.
2255 Section 27. Section 403.7255, Florida Statutes, is amended
2256 to read:
2257 403.7255 Placement of signs ~~Department to adopt rules~~.--
2258 (1) ~~The department shall adopt rules which establish~~
2259 ~~requirements and procedures for the placement of~~ Signs must be
2260 placed by the owner or operator at ~~sites which may have been~~
2261 ~~contaminated by hazardous wastes. Sites shall include~~ any site in
2262 the state which ~~that~~ is listed or proposed for listing on the

2263 Superfund Site List of the United States Environmental Protection
2264 Agency or any site identified by the department as a ~~suspected or~~
2265 ~~confirmed contaminated~~ site contaminated by hazardous waste where
2266 there is ~~may be~~ a risk of exposure to the public. The
2267 requirements of this section shall not apply to sites reported
2268 under ss. 376.3071 and 376.3072. The department shall establish
2269 requirements and procedures for the placement of signs, and may
2270 do so in rules, permits, orders, or other authorizations. The
2271 authorization ~~rules~~ shall establish the appropriate size for such
2272 signs, which size shall be no smaller than 2 feet by 2 feet, and
2273 shall provide in clearly legible print appropriate warning
2274 language for the waste or other materials at the site and a
2275 telephone number which may be called for further information.
2276 (2) Violations of this act are punishable as provided in s.
2277 403.161(4).
2278 (3) The provisions of this act are independent of and
2279 cumulative to any other requirements and remedies in this chapter
2280 or chapter 376, or any rules promulgated thereunder.
2281 Section 28. Subsection (5) of section 403.726, Florida
2282 Statutes, is amended to read:
2283 403.726 Abatement of imminent hazard caused by hazardous
2284 substance.--
2285 (5) The department may issue a permit or order requiring
2286 prompt abatement of an imminent hazard.
2287 Section 29. Subsection (8) of section 403.7265, Florida
2288 Statutes, is amended to read:
2289 403.7265 Local hazardous waste collection program.--
2290 (8) The department has the authority to establish an
2291 additional local project grant program enabling a local hazardous

2292 waste collection center grantee to receive funding for unique
2293 projects that improve the collection and lower the incidence of
2294 improper management of conditionally exempt or household
2295 hazardous waste. Eligible local governments may receive up to
2296 $50,000 in grant funds for these unique and innovative projects,
2297 provided they match 25 percent of the grant amount. If the
2298 department finds that the project has statewide applicability and
2299 immediate benefits to other local hazardous waste collection
2300 programs in the state, matching funds are not required. This
2301 grant will not count toward the $100,000 maximum grant amount for
2302 development of a collection center.
2303 Section 30. Sections 403.7075, 403.756, 403.78, 403.781,
2304 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786,
2305 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881,
2306 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, Florida
2307 Statutes, are repealed.
2308 Section 31. This act shall take effect July 1, 2006.