Committee on Environmental Regulation

Wednesday, March 22, 2006
1:00 – 4:00 PM
212 Knott

Revised

Allan G. Bense
Speaker

Mitch Needelman
Chair

AGENDA
Environmental Regulation Committee
March 22, 2006
1:00 p.m. – 4:00 p.m.
212 Knott

I. Call to Order/Roll Call

II. Opening Remarks

III. HB 1347 by Williams – relating to Land Management

IV. HB 749 by Bowen – relating to Sewage Treatment and Disposal Systems

V. HB 1029 by Baxley – relating to Carrying of Firearms in National Forests

VI. HB 1533 by Sands – relating to Petroleum Contamination

VII. PCB ENVR 06-06 – relating to Derelict Vessels

VIII. PCB ENVR 06-07 –relating to Wetland Mitigation

IX. Closing Remarks and Adjournment

HB 1347

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

The bill, in part:

- Creates the "Babcock Ranch Preserve Act" and establishes the Babcock Ranch Preserve to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the Babcock Ranch Preserve.
- Authorizes the creation of a not-for-profit corporation known as "Babcock Ranch, Inc. The purpose of Babcock Ranch, Inc., is to provide the following:
  a) Management and administrative services for the Babcock Ranch Preserve
  b) Management policy establishment and implementation
  c) Cooperation with state agencies to further the purposes for which the Babcock Ranch Preserve was created
  d) Administrative and accounting procedures for the operation of the Babcock Ranch, Inc.

  Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc. shall assume all authority to manage the Babcock Ranch Preserve. The preliminary management agreement term is for a five-year period and will automatically be extended for an additional five year period.

  The bill provides that upon the dissolution of Babcock Ranch, Inc. for any reason, the management responsibilities shall revert to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.
- Provides that Babcock Ranch, Inc. shall be governed by a nine-member governing board whose members will be appointed to staggered terms. The Board of Trustees of the Internal Improvement Trust Fund and the executive director of the Fish and Wildlife Conservation Commission shall make the initial appointments of the Babcock Trustees no later than 90 days after the initial acquisition of the Babcock Ranch by the state.
- Requires Babcock Ranch, Inc. to establish various business operation requirements relating to:
  a) Finances
  b) Reports
  c) Legal
  d) Development of comprehensive management plan

The fiscal impact on this bill is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve.

Safeguard Individual Liberty: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve.

B. EFFECT OF PROPOSED CHANGES:

Babcock Ranch

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

Currently, the Babcock Ranch includes tenant farms for watermelon and tomatoes on about 4,000 acres, 1,000 acres of sod farming, 2,000 acres of permitted mining activities, and 20,000 acres of improved pasture land. Public access to 6,000 acres covering six miles is provided through guided eco-tours by Babcock Wilderness Adventures, Inc. Hunting activities are authorized on 61,000 acres through 22 private annual hunting leases covering an average of 5,000 acres per lease. Prescribed burning activities are conducted on approximately 25,000 acres and 72,000 acres are in native vegetation and are grazed rotationally.

On November 22, 2005, the Board of Trustees of the Internal Improvement Trust Fund approved the Agreement for Sale and Purchase for the state to acquire approximately 74,000 acres of the Babcock Ranch for a total price of $350 million. As part of the acquisition agreement, Babcock Ranch Management LLC has agreed to manage all land to be purchased by the State in accordance with the State's land management plan that will be developed after the initial acquisition in July 2006. The preliminary management agreement will preserve and sustain the quality of the property as conservation land and habitat for many plant and animal ecosystems and prevent any use which would threat the conservation value. The manager of the ranch will be required to re-invest any profits made from the ranch or other businesses on the property back into the management and preservation of the land. This preliminary management agreement will be for a five-year period and will automatically be extended for an additional five year period.

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

Effect of Proposed Change

The bill creates section 259.1053, F.S., to be cited as the "Babcock Ranch Preserve Act." The bill provides that the Babcock Ranch must be protected for current and future generations by continued

operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

Babcock Ranch Preserve
The bill provides definitions relating to the act and upon the date of acquisition of the Babcock Ranch, there is established the "Babcock Ranch Preserve." The Babcock Ranch Preserve is established to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the preserve.

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

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

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

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

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

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

- Administration and operation of the Babcock Ranch Preserve
- Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
- Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
- Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
- Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve

The bill requires Babcock Ranch Inc. to develop reasonable procedures for entering into lease agreements and other agreements for the use and occupancy of the facilities of the Babcock Ranch Preserve. State laws and rules governing the procurement of commodities and services by state agencies shall apply to Babcock Ranch Inc.

The bill provides that Babcock Ranch Inc. may not:

- Dispose of any real property
- Enter into any contract, lease, or other agreement related to the use of ground or surface waters on or through property title in the name of the Board of Trustees of the Internal Improvement Trust Fund, and must obtain any permits that are required by the Department of Environmental Protection and the appropriate water management district.
- Convey any easements. Any easements within the Babcock Ranch Preserve must be executed by the Board of Trustees of the Internal Improvement Trust Fund.
- Enter into any contract, lease, or other agreement related to the use and occupancy of the Babcock Ranch Preserve for a period of greater than 10 years.

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

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

Babcock Trustees

The bill provides that the Babcock Ranch, Inc. shall be governed by a nine-member governing board whose members will be appointed to staggered terms. The Board of Trustees of the Internal Improvement Trust Fund and the executive director of the Fish and Wildlife Conservation Commission shall make the initial appointments of the Babcock Trustees no later than 90 days after the initial acquisition of the Babcock ranch by the state. The table below illustrates the composition of the Babcock Trustees:

Babcock Trustee Member Appointment	Qualification Criteria	Term Limits
Board of Trustees of the Internal Improvement Trust Fund (Five members)	• At least one member must be a resident of Charlotte County • At least one member must be a resident of Lee County • One appointee must have expertise in domestic livestock management and livestock business management • One appointee must have expertise in the management of game and nongame wildlife fish populations, including hunting, fishing, and other recreational activities • One appointee must have expertise in the sustainable management of forest lands for commodity purposes • One appointee must have expertise in financial management, budget and program analysis, and small business operations • One appointee must be active in a not-for-profit conservation organization concerned with the activities of the ranch	• Four initial members (4-yrs.) • One initial member (2-yrs.)
Executive Director, Fish and Wildlife Conservation Commission (One member)	One member who has expertise in hunting, fishing, nongame species management or wildlife habitat management, restoration, and conservation.	One initial member (2 –yrs.)
Babcock Florida Company (One member)	One member who has expertise in the activities and management of the Babcock Ranch as of the date of acquisition	One initial member (2 –yrs.)

	by the state.	
President of the Senate (One member)	One member of the public having expertise in any area of ranch operations.	One initial member (2 –yrs.)
Speaker of the House of Representatives (One member)	One member of the public having expertise in any area of ranch operations.	One initial member (2 –yrs.)
Note Relating To Term Limits: Each trustee appointed after the initial appointments by the Board of Trustees of the Internal Improvement Trust Fund and Fish and the Wildlife Conservation Commission shall be appointed to a 4-year term. Any vacancy among the trustees shall be filled in the same manner as the original appointment and any trustee appointed to fill a vacancy shall be appointed for the remainder of that term. No trustee may serve more than 8 years in consecutive terms.		
Meeting Requirements: At least three times per year at the call of the chair in Charlotte or Lee County in sessions open to the public.		
Chair, Executive Director and Employees: Trustee's shall elect a chair from among their membership and may appoint and fix the compensation and duties of an executive director of Babcock Ranch, Inc. along with any other officers and employees as the trustee's deem necessary. Officers and employees of Babcock Ranch, Inc. are not employees of the state but are private employees. At the request of the trustee's, the state may provide state employees for the purpose of assist the trustees to implement the requirements of this bill. Any state employee assisting for more than 30 days shall be provided on a reimbursable basis.		
Trustee Removal Criteria: A member of the Babcock Trustees may be removed for cause by the official who appointed that member and that absence from three consecutive meetings results in an automatic removal from the Babcock Trustees.		
Trustee Compensation: Members serve without compensation, but are entitled to receive from funds of Babcock Ranch, Inc. reimbursement for per diem and travel expenses as provided by section. 112.061, F.S.		
Trustee Liability; There shall be no liability on the part of, and no cause of action shall arise against, any member of the Babcock Trustees, or the employees or agents of the corporation, for any action taken in the performance of powers and duties.		
Surety Bond: Each trustee must give the Board of Trustees of the Internal Improvement Trust Fund a sufficient surety bond in the sum of $5,000, the cost being borne by the Babcock Ranch, Inc. conditioned on the trustee's faithful performance of their duties as a member of the governing board of Babcock Ranch, Inc.		
Trustee Powers: Trustees will have all necessary and proper powers for the exercise of the authorities vested in Babcock Ranch, Inc. including, but not limited to, the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities. All funds received by Babcock Ranch, Inc. shall be deposited into an authorized operating fund unless otherwise directed by the Legislature. The trustees may with the written approval of the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, designate hunting, fishing, and trapping zones and establish additional periods when hunting, fishing, or trapping are not permitted for reasons of public safety, administration, and the protection and enhancement of nongame habitat and nongame species.		

The bill states that the Babcock Trustee may not:

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

Babcock Ranch, Inc. Financial Matters

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

The bill requires Babcock Ranch, Inc., to prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after management of the Babcock Ranch Preserve begins. The Department of Agriculture and Consumer Services is directed to provide

assistance relating to the annual budget request for appropriations and may not deny a request or refuse to include in its annual legislative budget submission a request for appropriations from Babcock Ranch, Inc.

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

Babcock Ranch, Inc. Reporting Requirements
The bill requires Babcock Ranch, Inc, to provide for an annual financial audit by an independent certified public accountant. The audit report is required to be submitted no later than nine months after the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and fiscal committees of the Legislature.

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

Babcock Ranch, Inc. Legal and Insurance Related Maters
The bill requires Babcock Ranch, Inc. to adopt articles of incorporation and bylaws necessary to govern its activities. The bill stipulates that Babcock Ranch, Inc. may sue and be sued in its own name and shall be represented by the Attorney General. The bill also authorizes Babcock Ranch, Inc. to retain private attorneys to provide advice and counsel, if needed.

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

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

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

- Operation as a working ranch
- Protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve.
- Multiple use and sustained yield of renewable surface resources within the Babcock Ranch preserve
- Public use of and access to the Babcock Ranch Preserve
- Renewable resource use and management alternatives that benefit local communities and enhance the coordination of management objectives with those on surrounding lands.

The bill provides that any final decision to adopt or amend the comprehensive management plan or any activity related to the management of the land by the Babcock Trustees shall be made in sessions that are open to the public for comment.

The bill provides that the comprehensive management plan for the Babcock Ranch Preserve can only be implemented by Babcock Ranch, Inc. upon the expiration of the initial management agreement with Babcock Ranch Management LLC.

C. SECTION DIRECTORY:

Section 1. Creates section 259.1053, F.S., relating to the management of the Babcock Ranch Preserve.

Section 2. Provides the act will take effect July 1, 2006.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: The overall fiscal impact of this bill is indeterminate. The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services estimate interim land management funding to be $1.9 million while recurring funding needs have not been calculated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS: None.

V. COMMENTS

B. 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.

C. RULE-MAKING AUTHORITY:

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

D. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to land management; creating s. 259.1053,
3 F.S.; creating the Babcock Ranch Preserve Act; providing
4 purposes for which the preserve is established; providing
5 definitions; creating Babcock Ranch, Inc., a not-for-
6 profit corporation incorporated in the state; providing
7 that the corporation is subject to the provisions of chs.
8 119 and 286, F.S., requiring public records and meetings;
9 providing for the corporation to be governed by the
10 Babcock Trustees; providing for the appointment of
11 trustees and terms of office; prohibiting a trustee from
12 voting on any measure that constitutes a conflict of
13 interest; providing for the trustees to serve without
14 compensation but to receive per diem and travel expenses;
15 requiring that each trustee obtain a surety bond of a
16 specified amount; authorizing the trustees to appoint
17 officers and hire employees; authorizing state agencies to
18 provide state employees for purposes of administering the
19 Babcock Ranch Preserve; providing certain powers and
20 duties of the trustees; providing for the corporation to
21 establish and manage an operating fund; requiring an
22 annual financial audit of the accounts and records of the
23 corporation; requiring annual reports by the corporation
24 to the Board of Trustees of the Internal Improvement Trust
25 Fund, the Legislature, the Department of Agriculture and
26 Consumer Services, and the Fish and Wildlife Conservation
27 Commission; requiring that the corporation prepare an
28 annual budget; specifying a goal of self-sustaining

29 operation within a certain period; providing for the
30 corporation to retain donations and other moneys;
31 authorizing the corporation to sue and be subject to suit;
32 requiring that the corporation adopt articles of
33 incorporation and bylaws; requiring insurance; providing
34 for the exclusive use of a certain title; authorizing the
35 corporation to appoint advisory committees; providing
36 requirements for a comprehensive management plan;
37 specifying the procedures by which the corporation shall
38 assume management authority of the Babcock Ranch Preserve;
39 prohibiting the corporation from taking certain actions
40 without the consent of the Board of Trustees of the
41 Internal Improvement Trust Fund; requiring that the
42 corporation be subject to certain state laws and rules
43 governing the procurement of commodities and services;
44 authorizing the corporation to assess fees; providing for
45 reversion of the management responsibilities to certain
46 agencies upon the dissolution of the corporation;
47 providing for management of the Babcock Ranch Preserve
48 until expiration of a current management agreement;
49 providing an effective date.
50
51 Be It Enacted by the Legislature of the State of Florida:
52
53 Section 1. Section 259.1053, Florida Statutes, is created
54 to read:
55 259.1053 Babcock Ranch Preserve; Babcock Ranch, Inc.;
56 creation; membership; organization; duties.--

57 (1) This section may be cited as the "Babcock Ranch
58 Preserve Act."
59 (2)(a) The Babcock Ranch comprises the largest private
60 undeveloped single-ownership tract of land in Charlotte County
61 and contains historical evidence in the form of old logging
62 camps and other artifacts that indicate the importance of this
63 land for domesticated livestock production, timber supply, and
64 other bonafide agricultural uses.
65 (b) The careful husbandry of the Babcock Ranch, including
66 selective timbering, limited grazing and hunting, and the use of
67 prescribed burning, has preserved a mix of healthy range and
68 timberland having significant species diversity and providing a
69 model for sustainable land development and use.
70 (c) The Babcock Ranch must be protected for current and
71 future generations by continued operation as a working ranch
72 under a unique management regime that protects the land and
73 resource values of the property and the surrounding ecosystem
74 while allowing and providing for the ranch to become financially
75 self-sustaining. It is in the public's best interest that the
76 management regime for the Babcock Ranch include the development
77 of an operational program for appropriate preservation and
78 development of the ranch's land and resources. This management
79 regime will best be provided through the creation of a nonprofit
80 public-private entity that is capable of developing and
81 implementing creative methods of public land management that
82 will prove to be cost-effective and environmentally sensitive.
83 (3) As used in this section, the term:
84 (a) "Babcock Ranch Preserve" and "preserve" mean the lands

85 and facilities acquired in the Babcock Ranch Florida Forever
86 Acquisition.
87 (b) "Babcock Ranch, Inc.," and "corporation" mean the not-
88 for-profit corporation authorized and created under this section
89 to operate and manage the Babcock Ranch Preserve.
90 (c) "Babcock Trustees" and "trustees" mean the governing
91 board of the not-for-profit corporation created under this
92 section.
93 (d) "Commission" means the Fish and Wildlife Conservation
94 Commission.
95 (e) "Commissioner" means the Commissioner of Agriculture.
96 (f) "Department" means the Department of Agriculture and
97 Consumer Services.
98 (g) "Executive director" means the executive director of
99 the Fish and Wildlife Conservation Commission.
100 (h) "Financially self-sustaining" means management and
101 operation expenditures that are equal to or less than the
102 revenues derived from fees and other receipts for resource use
103 and development, interest, and invested funds.
104 (i) "Management and operating expenditures" means expenses
105 of the Babcock Trustees, salaries and benefits of staff,
106 administrative and operating expenses, improvements to and
107 maintenance of lands and facilities of the Babcock Ranch
108 Preserve, and other similar expenses. Funds directly
109 appropriated by the Legislature to Babcock Ranch, Inc., and
110 funds appropriated by the Legislature to the Babcock Ranch,
111 Inc., through the Fish and Wildlife Conservation Commission or
112 the Department of Agriculture and Consumer Services are not

113 management and operating expenditures.
114 (j) "Multiple use" means the management of all of the
115 renewable surface resources of the Babcock Ranch Preserve to
116 best meet the needs of the public, including the use of the land
117 for some or all of the renewable surface resources or related
118 services over areas large enough to allow for periodic
119 adjustments in use to conform to the changing needs and
120 conditions of the preserve while recognizing that some of the
121 land will be used for less than all of the renewable surface
122 resources available on that land. The goal of multiple use is
123 the harmonious and coordinated management of the renewable
124 surface resources, each with the other, without impairing the
125 productivity of the land and considering the relative value of
126 the renewable surface resources, and not necessarily the
127 combination of uses providing the greatest monetary return or
128 the greatest unit output.
129 (k) "Sustained yield of the renewable surface resources"
130 means the achievement and maintenance of a high-level annual or
131 regular periodic output of the various renewable surface
132 resources of the Babcock Ranch Preserve without impairing the
133 productivity of the land.
134 (4)(a) Upon the date of acquisition of the Babcock Ranch,
135 there is established the Babcock Ranch Preserve, which shall be
136 managed in accordance with the purposes and requirements of this
137 section.
138 (b) The preserve is established to protect and preserve
139 the environmental, agricultural, scientific, scenic, geologic,
140 watershed, fish, wildlife, historic, cultural, and recreational

141 values of the preserve and to provide for the multiple use and
142 sustained yield of the renewable surface resources within the
143 preserve consistent with this section.
144 (c) Except for the powers of the commissioner as
145 enumerated in this section and the powers of the commission as
146 enumerated in s. 9, Art. IV of the State Constitution, the
147 preserve shall be managed by the Babcock Ranch, Inc.
148 (d) This section does not preclude Babcock Ranch, Inc.,
149 before assuming management of the preserve and thereafter, from
150 allowing the use of common varieties of mineral materials such
151 as sand, stone, and gravel as necessary for construction and
152 maintenance of roads and facilities within the preserve.
153 (e) This section does not affect the constitutional
154 responsibilities of the commission with respect to fish and
155 wildlife, including the regulation of hunting, fishing, and
156 trapping within the preserve.
157 (f) This section does not preclude the maintenance and use
158 of roads and trails or the relocation of roads in existence on
159 the effective date of this act, or the construction,
160 maintenance, and use of new trails, or any motorized access
161 necessary for the administration of the land contained within
162 the Babcock Ranch Preserve, including motorized access necessary
163 for emergencies involving the health or safety of persons within
164 the preserve.
165 (5)(a) The Legislature finds that the public interest of
166 this state will be served by the creation of a not-for-profit
167 corporation the primary mission of which is the management and
168 operation of the Babcock Ranch Preserve. The purpose of the

169 corporation is to provide management and administrative services
170 for the preserve, to establish and implement management policies
171 that will best achieve the purposes and requirements of this
172 section, to cooperate with state agencies to further the
173 purposes for which the preserve was created, and to establish
174 the administrative and accounting procedures for the operation
175 of the corporation.
176 (b) There is created a not-for-profit corporation, to be
177 designated as "Babcock Ranch, Inc.," which shall be registered,
178 incorporated, organized, and operated in this state and in
179 compliance with chapter 617, and which shall not be a unit or
180 entity of state government. The Legislature determines, however,
181 that public policy dictates that the corporation operate in a
182 manner that is consistent with its public purpose and
183 specifically declares that the corporation and its governing
184 board and advisory committees or similar groups created by the
185 corporation, including any not-for-profit subsidiaries, are
186 subject to the provisions of chapter 119, relating to public
187 records, and those provisions of chapter 286 relating to public
188 meetings and records for any meetings of the corporation. The
189 corporation may be dissolved only by an act of the Legislature.
190 (c) The corporation shall be governed by the Babcock
191 Trustees, a nine-member governing board, whose members shall be
192 appointed to staggered terms by the Board of Trustees of the
193 Internal Improvement Trust Fund; the executive director of the
194 commission; the Babcock Florida Company, a corporation
195 registered to do business in the state, or it successors or
196 assigns; the President of the Senate; and the Speaker of the

197 House of Representatives, in the following manner:
198 1. The Board of Trustees of the Internal Improvement Trust
199 Fund shall appoint five voting members, at least one of whom
200 must be a resident of Charlotte County and at least one of whom
201 must be a resident of Lee County. An appointee may not be an
202 employee of any governmental entity. One appointee must have
203 expertise in aspects of domesticated livestock management,
204 production, and marketing, including range management and
205 livestock business management. One appointee must have expertise
206 in the management of game and nongame wildlife and fish
207 populations, including hunting, fishing, and other recreational
208 activities. One appointee must have expertise in the sustainable
209 management of forest lands for commodity purposes. One appointee
210 must have expertise in financial management, budget and program
211 analysis, and small business operations. One appointee must be
212 active in a not-for-profit conservation organization concerned
213 with the activities of the ranch.
214 2. The executive director shall appoint one voting member
215 who has expertise in hunting, fishing, nongame species
216 management or wildlife habitat management, restoration, and
217 conservation.
218 3. The Babcock Florida Company, or its successors or
219 assigns, shall appoint one voting member who has expertise in
220 the activities and management of the Babcock Ranch as of the
221 date of acquisition by the state.
222 4. The President of the Senate and the Speaker of the
223 House of Representatives shall each appoint one voting member,
224 who shall be a member of the public having expertise in any area

225 of ranch operations.
226 (d) A trustee may not be an officer, a director, or a
227 shareholder in any entity that contracts with or receives funds
228 from the corporation or its subsidiaries.
229 (e) A trustee may not vote in an official capacity upon
230 any measure that would inure to his or her special private gain
231 or loss; that he or she knows would inure to the special private
232 gain or loss of any principal by whom he or she is retained or
233 to the parent organization or subsidiary of a principal by which
234 he or she is retained; or that he or she knows would inure to
235 the special private gain or loss of a relative or business
236 associate of the trustee. Such trustee shall, before the vote is
237 taken, publicly state the nature of the trustee's interest in
238 the matter from which he or she is abstaining from voting and,
239 no later than 15 days after the vote occurs, disclose the nature
240 of his or her interest as a public record in a memorandum filed
241 with the person responsible for recording the minutes of the
242 meeting, who shall incorporate the memorandum in the minutes.
243 (f) The Board of Trustees of the Internal Improvement
244 Trust Fund and the executive director shall make the initial
245 appointments of the Babcock Trustees no later than 90 days after
246 the initial acquisition of the Babcock Ranch by the state. Four
247 trustees initially appointed by the Board of Trustees of the
248 Internal Improvement Trust Fund shall each be appointed to a 4-
249 year term. The remaining initial appointees shall each be
250 appointed to a 2-year term.
251 (g) Each trustee appointed after the initial appointments
252 made by the Board of Trustees of the Internal Improvement Trust

253 Fund and the executive director shall be appointed to a 4-year
254 term. Any vacancy among the trustees shall be filled in the same
255 manner as the original appointment, and any trustee appointed to
256 fill a vacancy shall be appointed for the remainder of that
257 term. However, a trustee may not serve more than 8 years in
258 consecutive terms.
259 (h) A member of the Babcock Trustees may be removed for
260 cause by the official who appointed that member. Absence from
261 three consecutive meetings results in automatic removal.
262 (i) A majority of the trustees constitutes a quorum for
263 the purpose of conducting business, and the governing board may
264 take official action by a majority vote of the members present
265 at any meeting at which a quorum is present.
266 (j) The trustees shall serve without compensation, but are
267 entitled to receive from funds of the corporation reimbursement
268 for per diem and travel expenses as provided by s. 112.061.
269 (k) There shall be no liability on the part of, and no
270 cause of action shall arise against, any member of the Babcock
271 Trustees, or the employees or agents of the corporation, for any
272 action taken in the performance of powers and duties under this
273 section.
274 (l) Each trustee, no later than 30 days after accepting an
275 appointment, must give the Board of Trustees of the Internal
276 Improvement Trust Fund a good and sufficient surety bond in the
277 sum of $5,000, the cost thereof being borne by the corporation,
278 conditioned on the trustee's faithful performance of his or her
279 duties as a member of the governing board of Babcock Ranch, Inc.
280 (m) The trustees shall elect a chair from among their

281 membership, and may appoint and fix the compensation and duties
282 of an executive director of the corporation and such other
283 officers and employees as the trustees consider necessary.
284 Except as provided in this section, officers and employees of
285 the corporation are not employees of the state but are private
286 employees. At the request of the trustees, the state may provide
287 state employees for the purpose of implementing this section.
288 Any state employee provided to assist the trustees of the
289 corporation in implementing the requirements of this section for
290 more than 30 days shall be provided on a reimbursable basis.
291 (n) The trustees shall meet, at the call of the chair, at
292 least three times per year in Charlotte County or Lee County in
293 sessions that are open to the public.
294 (o) Except for the constitutional powers of the commission
295 as provided in s. 9, Art. IV of the State Constitution, the
296 trustees of the corporation have all necessary and proper powers
297 for the exercise of the authorities vested in the corporation,
298 including, but not limited to, the power to solicit and accept
299 donations of funds, property, supplies, or services from
300 individuals, foundations, corporations, and other public or
301 private entities for the purposes of this section. All funds
302 received by the corporation shall be deposited into the
303 operating fund authorized under this section unless otherwise
304 directed by the Legislature.
305 (p) The trustees may, with the written approval of the
306 commission and in consultation with the department, designate
307 hunting, fishing, and trapping zones and establish additional
308 periods when hunting, fishing, or trapping are not permitted for

309 reasons of public safety, administration, and the protection and
310 enhancement of nongame habitat and nongame species, as defined
311 in s. 372.001.
312 (6)(a) The corporation may establish and manage an
313 operating fund for the purposes of addressing the corporation's
314 unique cash-flow needs and facilitating the fiscal management of
315 the corporation. The corporation may accumulate and maintain in
316 the operating fund at any time a cash balance reserve that is
317 equal to not more than 25 percent of its annual operating
318 expenses. Upon dissolution of the corporation, any remaining
319 cash balances of funds shall revert to the General Revenue Fund,
320 or such other state funds consistent with any appropriated
321 funding, as provided by law.
322 (b) The corporation shall provide for an annual financial
323 audit of its accounts and records to be conducted by an
324 independent certified public accountant in accordance with rules
325 adopted by the Auditor General under s. 11.45. The audit report
326 shall be submitted no later than 9 months after the end of the
327 fiscal year to the Auditor General, the President of the Senate,
328 the Speaker of the House of Representatives, and the appropriate
329 substantive and fiscal committees of the Legislature. The
330 Auditor General, the Office of Program Policy Analysis and
331 Government Accountability, and the substantive or fiscal
332 committees of the Legislature to which legislation affecting the
333 Babcock Ranch Preserve may be referred may require and receive
334 from the corporation or from the independent auditor any records
335 relative to the operation of the corporation.
336 (c) By January 15 of each year, the corporation shall

337 submit to the Board of Trustees of the Internal Improvement
338 Trust Fund, the President of the Senate, the Speaker of the
339 House of Representatives, the department, and the commission a
340 comprehensive and detailed report of its operations, activities,
341 and accomplishments for the prior year, including information
342 concerning the status of ecological, cultural, and financial
343 resources being managed by the corporation, and benefits
344 provided by the preserve to local communities. The report must
345 also include a section describing the corporation's goals for
346 the current year.
347 (d) The corporation shall prepare an annual budget with
348 the goal of achieving a financially self-sustaining operation
349 within 15 full fiscal years after management of the preserve
350 begins. The department shall provide necessary assistance,
351 including details as necessary, to the corporation for the
352 timely formulation and submission of an annual budget request
353 for appropriations, if any, to support the administration,
354 operation, and maintenance of the preserve. Any request for
355 appropriations shall be submitted to the department and shall be
356 included in the agency budget request as a line item
357 appropriation. Requests for appropriations shall be submitted to
358 the agency in time to allow the agency to meet the requirements
359 of s. 216.023. The department may not deny a request or refuse
360 to include in its annual legislative budget submission a request
361 for appropriations from the corporation.
362 (e) Notwithstanding any other provision of law, all moneys
363 received from donations or from the management of the preserve
364 shall be retained by the corporation in the operating fund and

365 shall be available, without further appropriation, for the
366 administration, preservation, restoration, operation and
367 maintenance, improvements, repairs, and related expenses
368 incurred with respect to properties being managed by the
369 corporation. Except for the reversion of funds appropriated to
370 the corporation or as otherwise provided by the Legislature,
371 moneys received by the corporation from the management of the
372 preserve are not subject to distribution to the state. Upon
373 assuming management responsibilities for the preserve, the
374 corporation shall optimize the generation of income based on
375 existing marketing conditions to the extent that activities do
376 not unreasonably diminish the long-term environmental,
377 agricultural, scenic, and natural values of the preserve, or the
378 multiple-use and sustained-yield capability of the land.
379 (f) The corporation may sue and be sued in its own name.
380 For purposes of such suits, the residence of the corporation
381 shall be the state. The corporation shall be represented by the
382 Attorney General in any litigation arising out of activities of
383 the corporation, except that the corporation may retain private
384 attorneys to provide advice and counsel.
385 (g) The corporation shall adopt articles of incorporation
386 and bylaws necessary to govern its activities.
387 (h) All parties in contract with the corporation and all
388 holders of leases from the corporation that are authorized to
389 occupy, use, or develop properties under the management
390 jurisdiction of the corporation must procure insurance of an
391 amount as is reasonable or customary to insure against any loss
392 in connection with such properties or with activities authorized

393 in such leases or contracts.
394 (i) The corporation has the sole and exclusive right to
395 use the words "Babcock Ranch, Inc.," and any seal, emblem, or
396 other insignia adopted by the trustees. Without the express
397 written authority of the corporation, a person may not use the
398 words "Babcock Ranch, Inc.," as the name under which that person
399 does or purports to do business or for the purpose of trade or
400 advertisement, and may not, in any manner, suggest any
401 connection with the corporation.
402 (j) The corporation may from time to time appoint advisory
403 committees to further any part of the provisions of this
404 section. The membership of an advisory committee shall be
405 reflective of the expertise necessary for the particular
406 function for which the committee was created and may include
407 public agencies, private entities, and not-for-profit
408 conservation and agricultural representatives.
409 (7)(a) A comprehensive management plan for the management
410 of the preserve and amendments to a comprehensive management
411 plan may be developed only with input from the department and
412 the commission and may be implemented only by the corporation
413 upon expiration of the management agreement executed by Babcock
414 Ranch Management LLC, a limited liability company incorporated
415 in the state, the Board of Trustees of the Internal Improvement
416 Trust Fund, the Fish and Wildlife Conservation Commission, the
417 Department of Agriculture and Consumer Services, and Lee County.
418 Any final decision of the trustees to adopt or amend a
419 comprehensive management plan or to approve any activity related
420 to the management of the land or renewable surface resources of

421 the preserve shall be made in sessions that are open to the
422 public. The trustees shall establish procedures for providing
423 adequate public information and opportunities for public comment
424 on proposed comprehensive management plans for the preserve or
425 for amendments to any comprehensive management plan adopted by
426 the trustees.
427 (b) Not less than 2 years before the corporation assumes
428 management responsibilities for the preserve, the corporation,
429 with input from the commission and the department, must begin
430 developing a comprehensive management plan for the management of
431 land, renewable surface resources, and facilities within the
432 preserve to carry out the purposes of this section. To the
433 extent consistent with such purposes, the comprehensive
434 management plan must provide for:
435 1. The operation of the preserve as a working ranch;
436 2. The protection and preservation of the environmental,
437 agricultural, scientific, scenic, geologic, watershed, fish,
438 wildlife, historic, cultural, and recreational values of the
439 preserve;
440 3. The promotion of high-quality hunting experiences for
441 the public, with emphasis on deer, turkey, and other game
442 species;
443 4. Multiple use and sustained yield of renewable surface
444 resources within the preserve;
445 5. Public use of and access to the preserve for
446 recreation; and
447 6. Renewable resource use and management alternatives
448 that, to the extent practicable, benefit local communities and

449 small businesses and enhance the coordination of management
450 objectives with those on surrounding public or private lands.
451 Use of renewable resources and management alternatives should
452 provide cost savings to the corporation through the exchange of
453 services, including, but not limited to, labor and maintenance
454 of facilities, for resources or services provided to the
455 corporation.
456 (c) The corporation shall assume all authority provided by
457 this section to manage the preserve upon a determination by the
458 Board of Trustees of the Internal Improvement Trust Fund which,
459 to the maximum extent practicable, shall be made no later than
460 60 days before the termination of the management agreement
461 specified in paragraph (a), that the corporation is able to
462 conduct business and that provision has been made for essential
463 management services on the preserve.
464 (d) Upon assuming management of the preserve, and with
465 input from the commission and the department, the corporation
466 shall manage the land and resources of the preserve and the use
467 thereof, including, but not limited to, such activities as
468 administration and operation of the preserve; preservation and
469 development of the land and renewable surface resources of the
470 preserve; interpretation of the preserve and its history on
471 behalf of the public; management, public use, and occupancy of
472 facilities and lands within the preserve; and maintenance,
473 rehabilitation, repair, and improvement of property within the
474 preserve.
475 (e) Upon assuming management of the preserve, the
476 corporation may develop programs and activities related to the

477 management of the preserve and may negotiate directly with and
478 enter into such agreements, leases, contracts, and other
479 arrangements with any person, firm, association, organization,
480 corporation, or governmental entity, including entities of
481 federal, state, and local governments, as are necessary and
482 appropriate to carry out its authorized activities or fulfill
483 the purposes of this section. The corporation shall establish
484 procedures for entering into lease agreements and other
485 agreements for the use and occupancy of the facilities of the
486 preserve. The procedures must ensure reasonable competition and
487 set guidelines for determining reasonable fees, terms, and
488 conditions for such agreements.
489 (8) The corporation may not dispose of any real property
490 in the preserve, may not enter into any contract, lease, or
491 other agreement related to the use of ground or surface waters
492 on or through property titled in the name of the state without
493 the consent of the Board of Trustees of the Internal Improvement
494 Trust Fund, and must obtain any permits that are required by the
495 Department of Environmental Protection and the appropriate water
496 management district under chapters 373 and 403. The corporation
497 may not convey any easements, and may not enter into any
498 contract, lease, or other agreement related to the use and
499 occupancy of the property within the preserve, for a period of
500 greater than 10 years. Any easements to be conveyed for the use
501 of, access to, or ingress and egress across state property
502 within the preserve must be executed by the Board of Trustees of
503 the Internal Improvement Trust Fund as the owners of the state
504 property within the preserve.

505 (9) State laws and rules governing the procurement of
506 commodities and services by state agencies as provided in s.
507 287.057 apply to the corporation.
508 (10) Upon assuming management of the preserve, the
509 corporation may assess reasonable fees for admission to, use of,
510 and occupancy of the preserve in order to offset the costs of
511 operating the preserve as a working ranch. These fees are
512 independent of fees assessed by the commission for the privilege
513 of hunting, fishing, or pursuing outdoor recreational activities
514 within the preserve and shall be deposited into the operating
515 fund established by the corporation under the authority provided
516 in this section.
517 (11) Upon dissolution of the corporation for any reason,
518 the management responsibilities provided in this section shall
519 revert to the managing agencies designated in the Babcock Ranch
520 Florida Forever Act.
521 (12) Babcock Ranch, Inc., and its officers and employees
522 shall participate in the management of the Babcock Ranch
523 Preserve in an advisory capacity only until the management
524 agreement executed by Babcock Ranch Management LLC and the Board
525 of Trustees of the Internal Improvement Trust Fund, the Fish and
526 Wildlife Conservation Commission, the Department of Agriculture
527 and Consumer Services, and Lee County is terminated or expires.
528 (13) On or before the date on which title to the Babcock
529 Ranch Florida Forever Acquisition is vested in the Board of
530 Trustees of the Internal Improvement Trust Fund, Babcock Ranch
531 Management LLC shall provide the commission and the department
532 with the management plan and business plan in place for the

533 operation of the ranch as of November 22, 2005, the date on
534 which the board of trustees approved the acquisition.
535 Section 2. This act shall take effect July 1, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Environmental Regulation
2 Representative(s) Williams offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 259.1053, Florida Statutes, is created
7 to read:
8 259.1053 Babcock Ranch Preserve; Babcock Ranch, Inc,;
9 creation; membership; organization; meetings.--
10 (1) This section may be cited as the "Babcock Ranch
11 Preserve Act."
12 (2) DEFINITIONS.--As used in this section, the term:
13 (a) "Babcock Ranch Preserve" and "preserve" mean the lands
14 and facilities acquired in the purchase of the Babcock Crescent
15 B Ranch, as provided in s. 259.1052.
16 (b) "Babcock Ranch, Inc." and "corporation" mean the not-
17 for-profit corporation created under this section to operate and
18 manage the Babcock Ranch Preserve as a working ranch.
19 (c) "Board of directors" means the governing board of the
20 not-for-profit corporation created under this section.
21 (d) "Commission" means the Fish and Wildlife Conservation
22 Commission.

23 (e) "Commissioner" means the Commissioner of Agriculture.
24 (f) "Department" means the Department of Agriculture and
25 Consumer Services.
26 (g) "Executive director" means the executive director of
27 the Fish and Wildlife Conservation Commission.
28 (h) "Financially self-sustaining" means management and
29 operation expenditures not more than the revenues collected from
30 fees and other receipts for resource use and development, and
31 interest and invested funds.
32 (i) "Management and operating expenditures" means expenses
33 of the corporation, including, but not limited to, salaries and
34 benefits of officers and staff, administrative and operating
35 expenses, costs for improvements to and maintenance of lands and
36 facilities of the Babcock Ranch Preserve, and other similar
37 expenses. Such expenditures shall be made from revenues
38 generated from the operation of the ranch and not from funds
39 appropriated by the Legislature except as provided in this
40 section.
41 (j) "Member" means a person appointed to the board of
42 directors of the not-for-profit corporation created under this
43 section.
44 (k) "Multiple use" means the management of all of the
45 renewable surface resources of the Babcock Ranch Preserve to
46 best meet the needs of the public, including the use of the land
47 for some or all of the renewable surface resources or related
48 services over areas large enough to allow for periodic
49 adjustments in use to conform to the changing needs and
50 conditions of the preserve while recognizing that a portion of
51 the land will be used for some of the renewable surface
52 resources available on that land. The goal of multiple use is
53 the harmonious and coordinated management of the renewable

54 surface resources without impairing the productivity of the land
55 and considering the relative value of the renewable surface
56 resources, and not necessarily a combination of uses to provide
57 the greatest monetary return or the greatest unit output.
58 (l) "Sustained yield of the renewable surface resources"
59 means the achievement and maintenance of a high level of annual
60 or regular periodic output of the various renewable surface
61 resources of the preserve without impairing the productivity of
62 the land.
63 (3) CREATION OF BABCOCK RANCH PRESERVE.--
64 (a) The acquisition of the Babcock Crescent B Ranch by the
65 Board of Trustees of the Internal Improvement Trust Fund is a
66 conservation acquisition under the Florida Forever program
67 created under s. 259.105, with a goal of sustaining the
68 ecological and economic integrity of the property being acquired
69 while allowing the business of the ranch to operate and prosper.
70 (b) Upon the date of acquisition of the Babcock Crescent B
71 Ranch, there is created the Babcock Ranch Preserve, which shall
72 be managed in accordance with the purposes and requirements of
73 this section.
74 (c) The preserve is established to protect and preserve
75 the environmental, agricultural, scientific, scenic, geologic,
76 watershed, fish, wildlife, historic, cultural, and recreational
77 values of the preserve, and to provide for the multiple use and
78 sustained yield of the renewable surface resources within the
79 preserve consistent with this section.
80 (d) Babcock Ranch, Inc., and its officers and employees
81 shall participate in the management of the Babcock Ranch
82 Preserve in an advisory capacity only until the management
83 agreement referenced in paragraph (10)(a) is terminated or
84 expires.

85 (e) Nothing in this section shall preclude Babcock Ranch,
86 Inc., prior to assuming management and operation of the preserve
87 and thereafter, from allowing the use of common varieties of
88 mineral materials such as sand, stone, and gravel for
89 construction and maintenance of roads and facilities within the
90 preserve.
91 (f) Nothing in this section shall be construed as
92 affecting the constitutional responsibilities of the commission
93 in the exercise of its regulatory and executive power with
94 respect to wild animal life and fresh water aquatic life,
95 including the regulation of hunting, fishing, and trapping
96 within the preserve.
97 (g) Nothing in this section shall be construed to
98 interfere with or prevent the ability of Babcock Ranch, Inc., to
99 implement agricultural practices authorized by the agricultural
100 land use designations established in the local comprehensive
101 plans of either Charlotte County or Lee County as those plans
102 apply to the Babcock Ranch Preserve.
103 (h) To clarify the responsibilities of the lead managing
104 agencies and the not-for-profit corporation created under this
105 section, the lead managing agencies are directed to establish a
106 range of resource protection values for the Babcock Ranch
107 Preserve, and the corporation shall establish operational
108 parameters to conduct the business of the ranch within the range
109 of values. The corporation shall establish a range of
110 operational values to conduct the business of the ranch, and the
111 lead managing agencies providing ground support to the ranch
112 outside of each agency's jurisdictional responsibilities shall
113 establish management parameters within that range of values.
114 (i) Nothing in this section shall preclude the maintenance
115 and use of roads and trails or the relocation of roads in

116 existence on the effective date of this section, or the
117 construction, maintenance, and use of new trails, or any
118 motorized access necessary for the administration of the land
119 contained within the preserve, including motorized access
120 necessary for emergencies involving the health or safety of
121 persons within the preserve.
122 (4) CREATION OF BABCOCK RANCH, INCORPORATED.--
123 (a) There is created a not-for-profit corporation, to be
124 known as Babcock Ranch, Inc., which shall be registered,
125 incorporated, organized, and operated in compliance with the
126 provisions of chapter 617, and which shall not be a unit or
127 entity of state government. For purposes of sovereign immunity,
128 the corporation shall be a corporation primarily acting as an
129 instrumentality of the state but otherwise shall not be an
130 agency within the meaning of s. 20.031(11) or a unit or entity
131 of state government.
132 (b) The corporation is organized on a nonstock basis and
133 shall operate in a manner consistent with its public purpose and
134 in the best interest of the state.
135 (c) Meetings and records of the corporation, its
136 directors, advisory committees, or similar groups created by the
137 corporation, including any not-for-profit subsidiaries, are
138 subject to the public records provisions of chapter 119, and the
139 public meetings and records provisions of s. 286.011.
140 (5) APPLICABILITY OF SECTION.--In any conflict between a
141 provision of this section and a provision of chapter 617, the
142 provisions of this section shall prevail.
143 (6) PURPOSE.--The purpose of Babcock Ranch, Inc., is to
144 provide management and administrative services for the preserve,
145 to establish and implement management policies that will achieve
146 the purposes and requirements of this section, to cooperate with

147 state agencies to further the purposes of the preserve, and to
148 establish the administrative and accounting procedures for the
149 operation of the corporation.
150 (7) BOARD; MEMBERSHIP; REMOVAL; LIABILITY.--The
151 corporation shall be governed by a nine-member board of
152 directors who shall be appointed by the Board of Trustees of the
153 Internal Improvement Trust Fund; the executive director of the
154 commission; the commissioner; the Babcock Florida Company, a
155 corporation registered to do business in the state, or it
156 successors or assigns; the Charlotte County Board of County
157 Commissioners and the Lee County Board of County Commissioners
158 in the following manner:
159 (a)1. The Board of Trustees of the Internal Improvement
160 Trust Fund shall appoint four members. No appointee shall be an
161 employee of any governmental entity. One appointee shall have
162 expertise in domesticated livestock management, production, and
163 marketing, including range management and livestock business
164 management. One appointee shall have expertise in the management
165 of game and nongame wildlife and fish population, including
166 hunting, fishing, and other recreational activities. One
167 appointee shall have expertise in the sustainable management of
168 forest lands for commodity purposes. One appointee shall have
169 expertise in financial management, budget and program analysis,
170 and small business operations.
171 2. The executive director shall appoint one member with
172 expertise in hunting; fishing; nongame species management; or
173 wildlife habitat management, restoration, and conservation.
174 3. The commissioner shall appoint one member with
175 expertise in agricultural operations or forestry management.
176 4. The Babcock Florida Company, its successors or assigns,
177 shall appoint one member with expertise in the activities and

178 management of the Babcock Ranch on the date of acquisition of
179 the ranch by the state as provided under s. 259.1052. This
180 appointee shall serve on the board of directors only until the
181 termination of or expiration of the management agreement
182 attached as Exhibit "E" to that certain agreement for sale and
183 purchase approved by the Board of Trustees of the Internal
184 Improvement Trust Fund on November 22, 2005, and by Lee County,
185 a political subdivision of the state, on November 20, 2005. Upon
186 termination of or expiration of the management agreement, the
187 person serving as the head of the property owner's association,
188 if any, required to be created under the agreement for sale and
189 purchase shall serve as a member of the Board of Directors of
190 Babcock Ranch, Inc.
191 5. The Charlotte County Board of County Commissioners
192 shall appoint one member who shall be a resident of the county
193 and who shall be active in an organization concerned with the
194 activities of the ranch.
195 6. The Lee County Board of County Commissioners shall
196 appoint one member who shall be a resident of the county and who
197 shall have experience in land conservation and management. This
198 appointee, or a successor appointee, shall serve as a member of
199 the board of directors so long as the county participates in the
200 state land management plan.
201 (b) All members of the board of directors shall be
202 appointed no later 90 days following the initial acquisition of
203 the Babcock Ranch by the state, and
204 1. Four members initially appointed by the Board of
205 Trustees of the Internal Improvement Trust Fund each shall serve
206 a 4-year term.
207 2. The remaining initial five appointees shall serve a 2-
208 year term.

209 3. Each Members appointed thereafter shall serve a 4-year
210 term.
211 4. A vacancy shall be filled in the same manner in which
212 the original appointment was made, and a member appointed to
213 fill a vacancy shall serve for the remainder of that term.
214 5. No member may serve more than 8 years in consecutive
215 terms.
216 (c) With the exception of the Babcock Florida Company
217 appointee, no member may be an officer, director, or shareholder
218 in any entity that contracts with or receives funds from the
219 corporation or its subsidiaries.
220 (d) No member shall vote in an official capacity upon any
221 measure which would inure to his or her special private gain or
222 loss, which he or she knows would inure to the special private
223 gain or loss of any principal by whom he or she is retained or
224 to the parent organization or subsidiary of a principal by which
225 he or she is retained, or which he or she knows would inure to
226 the special private gain or loss of a relative or business
227 associate of the member. Such member shall, prior to the vote
228 being taken, publicly state the nature of his or her interest in
229 the matter from which he or she is abstaining from voting and,
230 no later than 15 days following the date the vote occurs,
231 disclose the nature of his or her interest as a public record in
232 a memorandum filed with the person responsible for recording the
233 minutes of the meeting, who shall incorporate the memorandum in
234 the minutes of the meeting.
235 (e) Each member of the board of directors is accountable
236 for the proper performance of the duties of office, and each
237 member owes a fiduciary duty to the people of the state to
238 ensure that funds provided in furtherance of this section are
239 disbursed and used as prescribed by law and contract. Any

240 official appointing a member may remove that member for
241 malfeasance, misfeasance, neglect of duty, incompetence,
242 permanent inability to perform official duties, unexcused
243 absence from three consecutive meetings of the board, arrest or
244 indictment for a crime that is a felony or misdemeanor involving
245 theft or a crime of dishonesty, or pleading nolo contendere to,
246 or being found guilty of, any crime.
247 (f) Each member of the board of directors shall serve
248 without compensation, but shall receive travel and per diem
249 expenses as provided in s. 112.061 while in the performance of
250 his or her duties.
251 (8) ORGANIZATION; MEETINGS.--
252 (a)1. The board of directors shall annually elect a
253 chairperson and a vice chairperson from among the board's
254 members. The members may, by a vote of five of the nine board
255 members, remove a member from the position of chairperson or
256 vice chairperson prior to the expiration of his or her term as
257 chairperson or vice chairperson. His or her successor shall be
258 elected to serve for the balance of the removed chairperson's or
259 vice chairperson's term.
260 2. The chairperson shall ensure that records are kept of
261 the proceedings of the board of directors and is the custodian
262 of all books, documents, and papers filed with the board, the
263 minutes of meetings of the board, and the official seal of the
264 corporation.
265 (b)1. The board of directors shall meet upon the call of
266 the chairperson at least three times per year in Charlotte
267 County or in Lee County.
268 2. A majority of the members of the board of directors
269 constitutes a quorum. Except as otherwise provided in this
270 section, the board of directors may take official action by a

271 majority of the members present at any meeting at which a quorum
272 is present. Members may not vote by proxy.
273 (9) POWERS AND DUTIES.--
274 (a) The board of directors shall adopt articles of
275 incorporation and bylaws necessary to govern its activities. The
276 adopted articles of incorporation and bylaws must be approved by
277 the Board of Trustees of the Internal Improvement Trust Fund
278 prior to filing with the Department of State.
279 (b) The board of directors shall review and approve any
280 management plan developed pursuant to ss. 253.034 and 259.032
281 for the management of lands in the preserve prior to the
282 submission of that plan to the Board of Trustees of the Internal
283 Improvement Trust Fund for approval and implementation.
284 (c)1. Except for the constitutional powers of the
285 commission as provided in s. 9, Art. IV, of the State
286 Constitution, the board of directors shall have all necessary
287 and proper powers for the exercise of the authorities vested in
288 the corporation, including, but not limited to, the power to
289 solicit and accept donations of funds, property, supplies, or
290 services from individuals, foundations, corporations, and other
291 public or private entities for the purposes of this section. All
292 funds received by the corporation shall be deposited into the
293 operating fund authorized under this section unless otherwise
294 directed by the Legislature.
295 2. The board of directors may not increase the number of
296 its members.
297 3. The corporation may not purchase, take, receive, lease,
298 take by gift, devise, or bequest, or otherwise acquire, own,
299 hold, improve, use, or otherwise deal in and with real property,
300 or any interest therein, wherever situated.

301 4. The corporation may not sell, convey, mortgage, pledge,
302 lease, exchange, transfer, or otherwise dispose of any real
303 property.
304 5. The corporation may not purchase, take, receive,
305 subscribe for, or otherwise acquire, own, hold, vote, use,
306 employ, sell, mortgage, lend, pledge, or otherwise dispose of,
307 or otherwise use and deal in and with, shares and other
308 interests in, or obligations of, other domestic or foreign
309 corporations, whether for profit or not for profit,
310 associations, partnerships, or individuals, or direct or
311 indirect obligations of the United States, or of any other
312 government, state, territory, government district, municipality,
313 or any instrumentality thereof.
314 6. The corporation may not lend money for its corporate
315 purposes, invest and reinvest its funds, and take and hold real
316 and personal property as security for the payment of funds lent
317 or invested.
318 7. The corporation may not merge with other corporations
319 or other business entities.
320 8. The corporation may not enter into any contract, lease,
321 or other agreement related to the use of ground or surface
322 waters located in, on, or through the preserve without the
323 consent of the Board of Trustees of the Internal Improvement
324 Trust Fund and permits that may be required by the Department of
325 Environmental Protection or the appropriate water management
326 district under chapters 373 and 403.
327 9. The corporation may not grant any easements in, on, or
328 across the preserve. Any easements to be granted for the use of,
329 access to, or ingress and egress across state property within
330 the preserve must be executed by the Board of Trustees of the
331 Internal Improvement Trust Fund as the owners of the state

332 property within the preserve. Any easements to be granted for
333 the use of, access to, or ingress and egress across property
334 within the preserve titled in the name of a local government
335 must be granted by the governing body of that local government.
336 10. The corporation may not enter into any contract,
337 lease, or other agreement related to the use and occupancy of
338 the property within the preserve for a period of greater than 10
339 years.
340 (c) The members may, with the written approval of the
341 commission and in consultation with the department, designate
342 hunting, fishing, and trapping zones and establish additional
343 periods when no hunting, fishing, or trapping shall be permitted
344 for reasons of public safety, administration, and the protection
345 and enhancement of nongame habitat and nongame species, as
346 defined under s. 372.001.
347 (d) The corporation shall have the sole and exclusive
348 right to use the words "Babcock Ranch, Inc." and any seal,
349 emblem, or other insignia adopted by the members. Without the
350 express written authority of the corporation, no person may use
351 the words "Babcock Ranch, Inc." as the name under which that
352 person conducts or purports to conduct business, for the purpose
353 of trade or advertisement, or in any manner that may suggest any
354 connection with the corporation.
355 (e) The corporation may from time to time appoint advisory
356 committees to further any part of this section. The advisory
357 committees shall be reflective of the expertise necessary for
358 the particular function for which the committee is created and
359 may include public agencies, private entities, and not-for-
360 profit conservation and agricultural representatives.

361 (f) State laws governing the procurement of commodities
362 and services by state agencies, as provided in s. 287.057, shall
363 apply to the corporation.
364 (g) The corporation and its subsidiaries must provide
365 equal employment opportunities for all persons regardless of
366 race, color, religion, gender, national origin, age, handicap,
367 or marital status.
368 (10) OPERATING FUND, ANNUAL BUDGET, AUDIT, REPORTING
369 REQUIREMENTS.--
370 (a) The board of directors may establish and manage an
371 operating fund to address the corporation's unique cash-flow
372 needs and to facilitate the management and operation of the
373 preserve as a working ranch. A cash balance reserve of not more
374 than 25 percent of the annual management and operating
375 expenditures of the corporation may accumulate and be maintained
376 in the operating fund at anytime.
377 (b) The board of directors shall provide for an annual
378 financial audit of the corporate accounts and records to be
379 conducted by an independent certified public accountant in
380 accordance with rules adopted by the Auditor General under s.
381 11.45(8). The audit report shall be submitted no later than 3
382 months following the end of the fiscal year to the Auditor
383 General, the President of the Senate, the Speaker of the House
384 of Representatives, and the appropriate substantive and fiscal
385 committees of the Legislature. The Auditor General, the Office
386 of Program Policy Analysis and Government Accountability, and
387 the substantive or fiscal committees of the Legislature to which
388 legislation affecting the Babcock Ranch Preserve may be referred
389 shall have the authority to require and receive from the
390 corporation or from the independent auditor any records relative
391 to the operation of the corporation.

392 (c) Not later than January 15 of each year, Babcock Ranch,
393 Inc., shall submit to the Board of Trustees of the Internal
394 Improvement Trust Fund, the President of the Senate, the Speaker
395 of the House of Representatives, the department, and the
396 commission a comprehensive and detailed report of its
397 operations, activities, and accomplishments for the prior year,
398 including information on the status of the ecological, cultural,
399 and financial resources being managed by the corporation, and
400 benefits provided by the preserve to local communities. The
401 report shall also include a section describing the corporation's
402 goals for the current year.
403 (d) The board of directors shall prepare an annual budget
404 with the goal of achieving a financially self-sustaining
405 operation within 15 full fiscal years after the initial
406 acquisition of the Babcock Ranch by the state. The department
407 shall provide necessary assistance, including details as
408 necessary, to the corporation for the timely formulation and
409 submission of an annual legislative budget request for
410 appropriations, if any, to support the administration,
411 operation, and maintenance of the preserve. A request for
412 appropriations shall be submitted to the department and shall be
413 included in the department's annual legislative budget request
414 as a separate line item appropriation. Requests for
415 appropriations shall be submitted to the department in time to
416 allow the department to meet the requirements of s. 216.023. The
417 department may not deny a request or refuse to include in its
418 annual legislative budget submission a request from the
419 corporation for an appropriation.
420 (e) Notwithstanding any other provision of law, all moneys
421 received from donations or from management of the preserve shall
422 be retained by the corporation in the operating fund and shall

423 be available, without further appropriation, for the
424 administration, preservation, restoration, operation and
425 maintenance, improvements, repairs, and related expenses
426 incurred with respect to properties being managed by the
427 corporation. Except as provided in this section, moneys received
428 by the corporation for the management of the preserve shall not
429 be subject to distribution by the state. Upon assuming
430 management responsibilities for the preserve, the corporation
431 shall optimize the generation of income based on existing
432 marketing conditions to the extent that activities do not
433 unreasonably diminish the long-term environmental, agricultural,
434 scenic, and natural values of the preserve or the multiple-use
435 and sustained-yield capability of the land.
436 (f) All parties in contract with the corporation and all
437 holders of leases from the corporation that are authorized to
438 occupy, use, or develop properties under the management
439 jurisdiction of the corporation must procure the proper
440 insurance as is reasonable or customary to insure against any
441 loss in connection with the properties or with activities
442 authorized in the leases or contracts.
443 (11) COMPREHENSIVE BUSINESS PLAN.--
444 (a) A comprehensive business plan for the management and
445 operation of the preserve as a working ranch and amendments to
446 the business plan may only be developed with input from the
447 department and the commission and may only be implemented by
448 Babcock Ranch, Inc., upon expiration of the management agreement
449 attached as Exhibit "E" to that certain agreement for sale and
450 purchase approved by the Board of Trustees of the Internal
451 Improvement Trust Fund on November 22, 2005, and by Lee County
452 on November 20, 2005.

453 (b) Any final decision of Babcock Ranch, Inc., to adopt or
454 amend the comprehensive business plan or to approve any activity
455 related to the management of the renewable surface resources of
456 the preserve shall be made in sessions that are open to the
457 public. The board of directors shall establish procedures for
458 providing adequate public information and opportunities for
459 public comment on the proposed comprehensive business plan for
460 the preserve or for amendments to the comprehensive business
461 plan adopted by the members.
462 (c) Not less than 2 years prior to the corporation's
463 assuming management and operation responsibilities for the
464 preserve, the corporation, with input from the commission and
465 the department, must begin developing the comprehensive business
466 plan to carry out the purposes of this section. To the extent
467 consistent with the purposes, the comprehensive business plan
468 shall provide for:
469 1. The management and operation of the preserve as a
470 working ranch.
471 2. The protection and preservation of the environmental,
472 agricultural, scientific, scenic, geologic, watershed, fish,
473 wildlife, historic, cultural, and recreational values of the
474 preserve.
475 3. The promotion of high-quality hunting experiences for
476 the public, with emphasis on deer, turkey, and other game
477 species.
478 4. Multiple use and sustained yield of renewable surface
479 resources within the preserve.
480 5. Public use of and access to the preserve for recreation
481 6. The use of renewable resources and management
482 alternatives that, to the extent practicable, benefit local
483 communities and small businesses and enhance the coordination of

484 management objectives with those on surrounding public or
485 private lands. The use of renewable resources and management
486 alternatives should provide cost savings to the corporation
487 through the exchange of services, including, but not limited to,
488 labor and maintenance of facilities for resources or services
489 provided to the corporation.
490 (d) On or before the date on which title to the portion of
491 the Babcock Crescent B Ranch being purchased by the state, as
492 provided in s. 259.1052, is vested in the Board of Trustees of
493 the Internal Improvement Trust Fund, Babcock Ranch Management,
494 LLC, a limited liability company incorporated in the state,
495 shall provide the commission and the department with the
496 proprietary management plan and business plan in place for the
497 operation of the ranch as of November 22, 2005, the date on
498 which the board of trustees approved the purchase.
499 (12) MANAGEMENT OF PRESERVE; FEES.--
500 (a) The corporation shall assume all authority provided by
501 this section to manage and operate the preserve as a working
502 ranch upon a determination by the Board of Trustees of the
503 Internal Improvement Trust Fund that the corporation is able to
504 conduct business and that provision has been made for essential
505 services on the preserve, which, to the maximum extent
506 practicable, shall be made no later than 60 days prior to the
507 termination of the management agreement referenced in paragraph
508 (11)(a).
509 (b) Upon assuming management and operation of the
510 preserve, the corporation shall:
511 1. Manage and operate with input from the commission and
512 the department the preserve and the uses thereof, including, but
513 not limited to, the activities necessary to administer and
514 operate the preserve as a working ranch; the activities

515 necessary for the preservation and development of the land and
516 renewable surface resources of the preserve; the activities
517 necessary for interpretation of the history of the preserve on
518 behalf of the public; the activities necessary for the
519 management, public use, and occupancy of facilities and lands
520 within the preserve; and maintenance, rehabilitation, repair,
521 and improvement of property within the preserve.
522 2. Develop programs and activities relating to the
523 management of the preserve as a working ranch.
524 3. Negotiate directly with and enter into agreements,
525 leases, contracts, and other arrangements with any person, firm,
526 association, organization, corporation, or governmental entity,
527 including entities of federal, state, and local governments, as
528 are necessary and appropriate to carry out the purposes and
529 activities authorized by this section.
530 4. Establish procedures for entering into lease agreements
531 and other agreements for the use and occupancy of the facilities
532 of the preserve. The procedures shall ensure reasonable
533 competition and set guidelines for determining reasonable fees,
534 terms, and conditions for such agreements.
535 5. Assess reasonable fees for admission to, use of, and
536 occupancy of the preserve to offset costs for operation of the
537 preserve as a working ranch. These fees are independent of fees
538 assessed by the commission for the privilege of hunting,
539 fishing, or pursuing outdoor recreational activities within the
540 preserve and shall be deposited into the operating fund
541 established by the board of directors under the authority
542 provided in this section.
543 (13) MISCELLANEOUS PROVISIONS.--
544 (a) Except for the powers of the commissioner provided in
545 this section and the powers of the commission provided in s. 9,

546 Art. IV, of the State Constitution, the preserve shall be
547 managed by Babcock Ranch, Inc.
548 (b) Officers and employees of Babcock Ranch, Inc., are
549 private employees. At the request of the board of directors, the
550 commission and the department may provide state employees for
551 the purpose of implementing this section. Any state employee
552 provided to assist the directors in implementing this section
553 for more than 30 days shall be provided on a reimbursable basis.
554 Reimbursement to the commission and the department shall be made
555 from the corporation's operating fund provided under this
556 section and not from any funds appropriated to the corporation
557 by the Legislature.
558 (14) DISSOLUTION OF BABCOCK RANCH, INCORPORATED.--
559 (a) The corporation may only be dissolved by an act of the
560 Legislature.
561 (b) Upon dissolution of the corporation, the management
562 responsibilities provided in this section shall revert to the
563 commission and the department unless otherwise provided by the
564 Legislature under the act dissolving Babcock Ranch, Inc.
565 (c) Upon dissolution of the corporation, any cash balances
566 of funds shall revert to the General Revenue fund or such other
567 state fund as may be provided under the act dissolving Babcock
568 Ranch, Inc.
569 Section 2. This act shall take effect on the same date
570 that SB 1226 or similar legislation takes effect, if such
571 legislation is adopted in the same legislative session, or an
572 extension thereof, and becomes law.
573
574
575 ========== T I T L E A M E N D M E N T ==========
576 Remove everything before the enacting clause and insert:

577 A bill to be entitled
578 An act relating to land management; creating s. 259.1053,
579 F.S.; creating the Babcock Ranch Preserve Act; providing a
580 short title; providing definitions; creating Babcock
581 Ranch, Inc., a not-for-profit corporation to be
582 incorporated in the state; providing that the corporation
583 shall act as an instrumentality of the state for purposes
584 of sovereign immunity under s. 768.28, F.S.; providing
585 that the corporation shall not be an agency under s.
586 20.03, F.S.; providing that the corporation is subject to
587 the provisions of chs. 119 and 286, F.S., requiring public
588 records and meetings; providing for the corporation to be
589 governed by the Babcock board of directors; providing for
590 the appointment of board members and terms of office;
591 prohibiting any board member from voting on any measure
592 that constitutes a conflict of interest; providing for the
593 board members to serve without compensation, but to
594 receive per diem and travel expenses; authorizing state
595 agencies to provide state employees for purposes of
596 implementing the Babcock Ranch Preserve; providing certain
597 powers and duties of the corporation; providing
598 limitations on the powers and duties of the corporation;
599 providing that the corporation and its subsidiaries must
600 provide equal employment opportunities; providing for the
601 corporation to establish and manage an operating fund;
602 requiring an annual financial audit of the accounts and
603 records of the corporation; requiring annual reports by
604 the corporation to the Board of Trustees of the Internal
605 Improvement Trust Fund, the Legislature, the Department of
606 Agriculture and Consumer Services, and the Fish and
607 Wildlife Conservation Commission; requiring that the

608 corporation prepare an annual budget; specifying a goal of
609 self-sustaining operation within a certain period;
610 providing for the corporation to retain donations and
611 other moneys; requiring that the corporation adopt
612 articles of incorporation and bylaws subject to the
613 approval of the Board of Trustees of the Internal
614 Improvement Trust Fund; authorizing the corporation to
615 appoint advisory committees; providing requirements for a
616 comprehensive business plan; specifying the procedures by
617 which the corporation shall assume the management and
618 operation of the Babcock Ranch Preserve; prohibiting the
619 corporation from taking certain actions without the
620 consent of the Board of Trustees of the Internal
621 Improvement Trust Fund; requiring that the corporation be
622 subject to certain state laws and rules governing the
623 procurement of commodities and services; authorizing the
624 corporation to assess fees; providing for management of
625 the Babcock Ranch Preserve until expiration of a current
626 management agreement; providing for reversion of the
627 management and operation responsibilities to certain
628 agencies upon the dissolution of the corporation;
629 providing that the corporation may only be dissolved by an
630 act of the Legislature; providing for reversion of funds
631 upon the dissolution of the corporation; providing a
632 contingent effective date.
633
634 WHEREAS, the Babcock Ranch comprises the largest private
635 undeveloped single-ownership tract of land in Charlotte County
636 and contains historical evidence in the form of old logging
637 camps and other artifacts that indicate the importance of this

638 land for domesticated livestock production, timber supply, and
639 other bona fide agricultural uses, and
640 WHEREAS, the careful husbandry of the Babcock Ranch,
641 including selective timbering, limited grazing and hunting, and
642 the use of prescribed burning, has preserved a mix of healthy
643 range and timberland with significant species diversity and
644 provides a model for sustainable land development and use, and
645 WHEREAS, the Babcock Ranch must be protected for current
646 and future generations by continued operation as a working ranch
647 under a unique management regime that protects the land and
648 resource values of the property and the surrounding ecosystem
649 while allowing and providing for the ranch to become financially
650 self-sustaining, and
651 WHEREAS, it is in the public's best interest that the
652 management regime for the Babcock Ranch include the development
653 of an operational program for appropriate preservation and
654 development of the ranch's land and resources, and
655 WHEREAS, the public's interest will be served by the
656 creation of a not-for-profit corporation to develop and
657 implement environmentally sensitive, cost-effective, and
658 creative methods to manage and operate a working ranch, NOW,
659 THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

The bill requires counties, municipalities and sewer districts that propose to expand or build new central sewerage facilities to prepare and make public a report comparing the cost to each homeowner of construction and operation of the proposed sewerage facilities versus the cost to each homeowner of construction and operation of "advanced secondary" onsite systems or "decentralized" onsite systems.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development with any Department of Health-approved onsite systems.

Finally, the bill exempts an owner of an onsite system that is either (1) an advanced secondary system, (2) a decentralized system, or (3) a department-permitted system that is not failing, from mandatory connection to a publicly-owned or investor-owned sewerage system.

Fiscal: Indeterminate, but according to local government representatives (counties, municipalities, special taxing districts), the impact could be significant. The opt-out option for homeowners could jeopardize on-going bond commitments for sewerage projects and affect the local governments' ability to secure future lending. In addition, because conditions for onsite systems vary tremendously, a local government will be required to conduct a detailed inspection of every single lot within the proposed service area and analyze the various types of onsite systems that could be operated on a given lot.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government: The bill is likely to increase workload of county, municipality, and sewer districts due to the required feasibility study.

Lower taxes: Indeterminate as to scope, but the provisions herein may affect ongoing bond commitments by local governments for the construction or expansion of sewerage systems if homeowners with onsite systems are permitted to opt out of an available central system.

Personal responsibility: The bill permits homeowners with onsite sewage systems to opt out of connecting to an available central system.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background – The Federal Clean Water Act and Wastewater Discharge

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

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

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

State Regulation for Sewage Systems

Statutory regulation of infrastructure relating to Florida counties' water and sewerage systems is found in Chapter 153, F.S., which authorizes local governments to:

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

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

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

Part II of Chapter 153, F.S., provides for the creation of special taxing districts, county water and sewer districts, in order to reach and provide services to unincorporated areas in need of sewer and water services.

Florida's Department of Health regulates the public health of public water systems, and onsite sewage treatment systems in Chapter 381, F.S. Section 381.0065, F.S., provides for onsite sewage treatment permitting for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems in areas where publicly-owned or investor-owned sewerage systems are not available. When central systems are made available, local governments have the authority to require connection of onsite systems to central sewerage systems within 365 days of the central system's availability.[3]

To ensure that certain types of public facilities and services (e.g., sewer, water, and roads) needed to serve residents are constructed and made available contemporaneously with the impact of new development, lawmakers directed local governments to incorporate the concept of concurrency in the 1980s.[4]

Growth and Concurrency Obligations

A centerpiece of Florida's 1985 growth management legislation was concurrency.[5] At its core, concurrency is a requirement that development is not to proceed unless infrastructure capacity and specific urban services are in place to service the new development. Concurrency was intended to help address major infrastructure problems facing the state, especially increasing road congestion. As the state added approximately 300,000 residents each year during the 1970s and into the 1980s, a trend that has continued almost unabated for the last forty years, local and state road infrastructure became increasingly plagued by traffic congestion. In addition, other problems were apparent as well, including potable water availability, the need to treat wastewater to meet higher federal standards, and increasing problems relating to inadequate stormwater management.[6] Section 163.3180, F.S., mandates that sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation facilities, including mass transit, are the only public facilities and services subject to the concurrency requirement on a statewide basis.[7]

Central Wastewater Collection and Treatment[8]

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

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[3] Section 381.00655, F.S

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

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

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

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

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

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

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

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

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

Preliminary Treatment

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

Secondary Treatment

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

On-site Systems

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

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

Alternative systems use pumps or gravity to help septic tank effluent trickle through sand, organic matter (e.g., peat, sawdust), constructed wetlands, or other media to remove or neutralize pollutants like disease-causing pathogens, nitrogen, phosphorus, and other contaminants. Some alternative systems are designed to evaporate wastewater or disinfect it before it is discharged to the soil or

surface waters.[9] The EPA developed guidelines to assist communities in establishing comprehensive management programs for onsite/decentralized wastewater systems to improve water quality and protect public health. The voluntary guidelines address the sensitivity of the environment in the community and the complexity of the system used. The five model management programs are:

- System inventory and awareness of maintenance needs.
- Management through maintenance contracts.
- Management through operating permits.
- Utility operation and maintenance.
- Utility ownership and management.[10]

According to the U.S. Census Bureau, approximately 26 million homes (one-fourth of all homes) in America are served by decentralized wastewater treatment systems. The Census Bureau reports that the distribution and density of septic systems vary widely by region and state, from a high of about 55 percent in Vermont to a low of around 10 percent in California. The New England states have the highest proportion of homes served by septic systems: New Hampshire and Maine both report that about one-half of all homes are served by individual systems. More than one-third of the homes in the southeastern states depend on these systems, including approximately 48 percent in North Carolina and about 40 percent in both Kentucky and South Carolina. More than 60 million people in the nation are served by septic systems. About one-third of all new development is served by septic or other decentralized treatment systems.[11] According to the Florida Department of Health, 31 percent of the Florida population is served by an estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment.[12]

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

TMDL Program

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the states until numerous lawsuits were filed by environmental groups.[13]

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

In the 2005 Regular Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the

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

state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[14]

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

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

Effect of Proposed Changes

The bill requires counties, municipalities and sewer districts that propose to expand or build new central sewerage facilities to prepare and make public a report comparing the cost to each homeowner of construction and operation of the proposed sewerage facilities versus the cost to each homeowner of construction and operation of "advanced secondary" onsite systems or "decentralized" onsite systems.

In addition, the bill allows local governments to meet growth management concurrency requirements for "sanitary sewers" for new development with any Department of Health-approved onsite systems.

Finally, the bill exempts an owner of an onsite system that is either (1) an advanced secondary system, (2) a decentralized system, or (3) a department-permitted system that is not failing, from mandatory connection to a publicly-owned or investor-owned sewerage system.

According to the DEP, this pre-emption of local authority combined with the lack of restrictions on when and where these onsite systems can be located does not take into account environmentally sensitive areas, including areas with public health implications, where the cumulative impacts of onsite systems, even advanced technology systems, present a threat: ground water recharge zones, drinking water sources and wellhead protection areas, springs and springs recharge zones, shellfish harvesting areas, swimming beaches, Aquatic Preserves, Outstanding Florida Waters, impaired waters pursuant to s. 403.067, F.S.

C. SECTION DIRECTORY:

Section 1. Adds subsection (5) to s. 153.54, F.S., to require each local government that proposes to expand or build new central sewerage facilities to prepare and make public a report comparing the cost to each homeowner of construction and operation of the proposed sewerage facilities versus the cost to each homeowner of construction and operation of "advanced secondary" onsite systems or "decentralized" onsite systems.

Section 2. Adds paragraph (c) to subsection (2) of section 153.73, F.S., to require each county water and sewer district that proposes to expand or build new central sewerage facilities to prepare and make public a report comparing the cost to each homeowner of construction and operation of the proposed

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

sewerage facilities versus the cost to each homeowner of construction and operation of "advanced secondary" onsite systems or "decentralized" onsite systems.

Section 3. Amends paragraph (a) of subsection (2) of section 163.3180, F.S., to allow local governments to meet growth management concurrency requirements for "sanitary sewers" for new development with any Department of Health-approved onsite systems.

Section 4. Adds subsection (3) to section 180.03, F.S., to require each municipality that proposes to expand or build new central sewerage facilities to prepare a report comparing the cost to each homeowner of construction and operation of the proposed sewerage facilities versus the cost to each homeowner of construction and operation of "advanced secondary" onsite systems or "decentralized" onsite systems, prior to adopting a resolution or ordinance as required in Subsection (1) of this section. The report shall be made public by including the study in the resolution or ordinance.

Section 5. Adds paragraphs (c), (d), and (e), to subsection (2) of section 381.00655, F.S., to exempt an owner of an onsite system that is either (1) an advanced secondary system, (2) a decentralized system, or (3) a department-permitted system that is not failing, from mandatory connection to a publicly-owned or investor-owned sewerage system.

Section 6. provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate as to scope, but the bill may affect ongoing bond commitments by local governments for the construction or expansion of sewerage systems if homeowners with onsite systems are permitted to opt out of a central system, as well as affect local governments' ability to secure funding for future sewerage projects.

2. Expenditures:

   Indeterminate as to scope. The bill is likely to increase workload and costs of county, municipality, and sewer districts due to the required feasibility study.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill requires counties and cities to conduct a feasibility study. Such studies will require the expenditure of funds. As such, the bill may constitutive a type A mandate.

2. Other:

   Similar feasibility studies are already required under statute, and possibly this requirement could be rolled into local governments' current responsibilities.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments provided by local government representatives and state agencies were extensive, and included the need for clarification of terms, attention to environmental and public health safeguards, fiscal impacts associated with the on-going bond commitments for infrastructure, feasibility studies and the opt-out provision, and growth management issues. The stakeholders have been meeting and are expected to present an amendment to ameliorate as many concerns as are possible.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to sewage treatment and disposal systems;
3 amending s. 153.54, F.S.; requiring county commissions to
4 include certain studies for the construction of a new
5 proposed sewerage system or the extension of an existing
6 sewerage system in certain reports; amending s. 153.73,
7 F.S.; requiring county water and sewer districts to
8 conduct certain studies for the construction of a new
9 proposed sewerage system or the extension of an existing
10 sewerage system prior to the levying of certain
11 assessments; amending s. 163.3180, F.S.; authorizing local
12 governments to use certain onsite sewage treatment and
13 disposal systems to meet certain concurrency requirements;
14 amending s. 180.03, F.S.; requiring municipalities to
15 conduct certain studies for the construction of a new
16 proposed sewerage system or the extension of an existing
17 sewerage system prior to the adoption of certain
18 resolutions or ordinances; amending s. 381.00655, F.S.;
19 exempting certain onsite sewage treatment and disposal
20 systems from connecting to a publicly owned or investor-
21 owned sewerage system under certain circumstances;
22 providing an effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Subsection (5) is added to section 153.54,
27 Florida Statutes, to read:

28 153.54 Preliminary report by county commissioners with
29 respect to creation of proposed district.--Upon receipt of a
30 petition duly signed by not less than 25 qualified electors who
31 are also freeholders residing within an area proposed to be
32 incorporated into a water and sewer district pursuant to this
33 law and describing in general terms the proposed boundaries of
34 such proposed district, the board of county commissioners if it
35 shall deem it necessary and advisable to create and establish
36 such proposed district for the purpose of constructing,
37 establishing or acquiring a water system or a sewer system or
38 both in and for such district (herein called "improvements"),
39 shall first cause a preliminary report to be made which such
40 report together with any other relevant or pertinent matters,
41 shall include at least the following:
42 (5) For the construction of a new proposed sewerage system
43 or the extension of an existing sewerage system, a detailed
44 feasibility study comparing the costs to the owner of each
45 affected lot or parcel of construction and operation of the
46 proposed sewerage system or extension of the existing sewerage
47 system to the costs of construction and operation of an onsite
48 sewage treatment and disposal system approved by the Department
49 of Health that provides for decentralized distribution or for
50 treatment meeting advanced secondary treatment standards.
51
52 Such report shall be filed in the office of the clerk of the
53 circuit court and shall be open for the inspection of any
54 taxpayer, property owner, qualified elector or any other
55 interested or affected person.

56 Section 2. Paragraph (c) is added to subsection (2) of
57 section 153.73, Florida Statutes, to read:
58 153.73 Assessable improvements; levy and payment of
59 special assessments.--Any district may provide for the
60 construction or reconstruction of assessable improvements as
61 defined in s. 153.52, and for the levying of special assessments
62 upon benefited property for the payment thereof, under the
63 provisions of this section.
64 (2)
65 (c) For the construction of a new proposed sewerage system
66 or the extension of an existing sewerage system, the engineer
67 shall also prepare a detailed feasibility study comparing the
68 costs to the owner of each affected lot or parcel of
69 construction and operation of the proposed sewerage system or
70 extension of the existing sewerage system to the costs of
71 construction and operation of an onsite sewage treatment and
72 disposal system approved by the Department of Health that
73 provides for decentralized distribution or for treatment meeting
74 advanced secondary treatment standards.
75 Section 3. Paragraph (a) of subsection (2) of section
76 163.3180, Florida Statutes, is amended to read:
77 163.3180 Concurrency.--
78 (2)(a) Consistent with public health and safety, sanitary
79 sewer, solid waste, drainage, adequate water supplies, and
80 potable water facilities shall be in place and available to
81 serve new development no later than the issuance by the local
82 government of a certificate of occupancy or its functional
83 equivalent. Prior to approval of a building permit or its

84 functional equivalent, the local government shall consult with
85 the applicable water supplier to determine whether adequate
86 water supplies to serve the new development will be available no
87 later than the anticipated date of issuance by the local
88 government of a certificate of occupancy or its functional
89 equivalent. A local government may meet the concurrency
90 requirement for sanitary sewer through the use of onsite sewage
91 treatment and disposal systems approved by the Department of
92 Health to serve new development.
93 Section 4. Subsection (3) is added to section 180.03,
94 Florida Statutes, to read:
95 180.03 Resolution or ordinance proposing construction or
96 extension of utility; objections to same.--
97 (3) For the construction of a new proposed sewerage system
98 or the extension of an existing sewerage system, prior to
99 adopting the resolution or ordinance required in subsection (1),
100 the municipality shall prepare a detailed feasibility study
101 comparing the costs to the owner of each affected lot or parcel
102 of construction and operation of the proposed sewerage system or
103 extension of the existing sewerage system to the costs of
104 construction and operation of an onsite sewage treatment and
105 disposal system approved by the Department of Health that
106 provides for decentralized distribution or for treatment meeting
107 advanced secondary treatment standards. The results of such a
108 study shall be included in the resolution or ordinance required
109 in subsection (1).
110 Section 5. Paragraphs (c), (d), and (e) are added to
111 subsection (2) of section 381.00655, Florida Statutes, to read:

112 381.00655 Connection of existing onsite sewage treatment
113 and disposal systems to central sewerage system; requirements.--
114 (2) The provisions of subsection (1) or any other
115 provision of law to the contrary notwithstanding:
116 (c) The owner of a decentralized onsite sewage treatment
117 and disposal system permitted by the department shall not be
118 required to connect to a publicly owned or investor-owned
119 sewerage system as long as the onsite system is functioning
120 properly and satisfying the conditions of the operating permit.
121 (d) The owner of a performance-based onsite sewage
122 treatment and disposal system permitted by the department that
123 provides for treatment meeting advanced secondary treatment
124 standards shall not be required to connect to a publicly owned
125 or investor-owned sewerage system as long as the onsite system
126 is functioning properly and satisfying the conditions of the
127 operating permit.
128 (e) The owner of an onsite sewage treatment and disposal
129 system not described in paragraph (c) or paragraph (d) but
130 permitted by the department shall not be required to connect to
131 a publicly owned or investor-owned sewerage system if the owner
132 executes a legally binding agreement requiring the owner to
133 install a system described in paragraph (c) or paragraph (d)
134 upon the failure of the existing onsite system.
135 Section 6. This act shall take effect July 1, 2006.

Bill No. **749**

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 Representative(s) Bowen offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (5) is added to section 153.54,
7 Florida Statutes, to read:
8 153.54 Preliminary report by county commissioners with
9 respect to creation of proposed district.--Upon receipt of a
10 petition duly signed by not less than 25 qualified electors who
11 are also freeholders residing within an area proposed to be
12 incorporated into a water and sewer district pursuant to this
13 law and describing in general terms the proposed boundaries of
14 such proposed district, the board of county commissioners if it
15 shall deem it necessary and advisable to create and establish
16 such proposed district for the purpose of constructing,
17 establishing or acquiring a water system or a sewer system or
18 both in and for such district (herein called "improvements"),
19 shall first cause a preliminary report to be made which such
20 report together with any other relevant or pertinent matters,
21 shall include at least the following:

22 (5) For the construction of a new proposed sewerage system
23 or the extension of an existing sewerage system which was not
24 previously approved or not in a designated urban service area,
25 the report shall include a detailed feasibility study that:
26 evaluates the present age, condition, and maintenance history of
27 onsite sewage treatment and disposal systems currently in use in
28 the area; a comparison of the projected costs to the owner of a
29 typical lot or parcel of connecting to and using the proposed
30 sewerage system versus installing, operating and properly
31 maintaining an onsite sewage treatment system, approved by the
32 Department of Health that provides for the comparable level of
33 environmental and health protection as the proposed central
34 sewerage system; evaluates whether the density required to
35 accommodate onsite sewage treatment and disposal systems would
36 meet the local government's comprehensive plan requirements for
37 density for the area and environmental protection of the local
38 government's surface and groundwater; and consideration of the
39 local government's obligations or reasonably anticipated
40 obligations for water body cleanup and protection under state or
41 federal programs.
42
43 Such report shall be filed in the office of the clerk of the
44 circuit court and shall be open for the inspection of any
45 taxpayer, property owner, qualified elector or any other
46 interested or affected person.
47 Section 2. Paragraph (c) is added to subsection (2) of
48 section 153.73, Florida Statutes, to read:
49 153.73 Assessable improvements; levy and payment of
50 special assessments.--Any district may provide for the
51 construction or reconstruction of assessable improvements as
52 defined in s. 153.52, and for the levying of special assessments

53 upon benefited property for the payment thereof, under the
54 provisions of this section.
55 (2)
56 (c) For the construction of a new proposed sewerage system
57 or the extension of an existing sewerage system which was not
58 previously approved or not in a designated urban service area,
59 the report shall include a detailed feasibility study that:
60 evaluates the present age, condition, and maintenance history of
61 onsite sewage treatment and disposal systems currently in use in
62 the area; a comparison of the projected costs to the owner of a
63 typical lot or parcel of connecting to and using the proposed
64 sewerage system versus installing, operating and properly
65 maintaining an onsite sewage treatment system, approved by the
66 Department of Health that provides for the comparable level of
67 environmental and health protection as the proposed central
68 sewerage system; evaluates whether the density required to
69 accommodate onsite sewage treatment and disposal systems would
70 meet the local government's comprehensive plan requirements for
71 density for the area and environmental protection of the local
72 government's surface and groundwater; and consideration of the
73 local government's obligations or reasonably anticipated
74 obligations for water body cleanup and protection under state or
75 federal programs.
76 Section 3. Paragraph (a) of subsection (2) of section
77 163.3180, Florida Statutes, is amended to read:
78 163.3180 Concurrency.--
79 (2)(a) Consistent with public health and safety, sanitary
80 sewer, solid waste, drainage, adequate water supplies, and
81 potable water facilities shall be in place and available to
82 serve new development no later than the issuance by the local
83 government of a certificate of occupancy or its functional

84 equivalent. Prior to approval of a building permit or its
85 functional equivalent, the local government shall consult with
86 the applicable water supplier to determine whether adequate
87 water supplies to serve the new development will be available no
88 later than the anticipated date of issuance by the local
89 government of a certificate of occupancy or its functional
90 equivalent. A local government may meet the concurrency
91 requirement for sanitary sewer through the use of onsite sewage
92 treatment and disposal systems approved by the Department of
93 Health to serve new development.
94 Section 4. Subsection (3) is added to section 180.03,
95 Florida Statutes, to read:
96 180.03 Resolution or ordinance proposing construction or
97 extension of utility; objections to same.--
98 (3) For the construction of a new proposed sewerage system
99 or the extension of an existing sewerage system which was not
100 previously approved or not in a designated urban service area,
101 the report shall include a detailed feasibility study that:
102 evaluates the present age, condition, and maintenance history of
103 onsite sewage treatment and disposal systems currently in use in
104 the area; a comparison of the projected costs to the owner of a
105 typical lot or parcel of connecting to and using the proposed
106 sewerage system versus installing, operating and properly
107 maintaining an onsite sewage treatment system, approved by the
108 Department of Health that provides for the comparable level of
109 environmental and health protection as the proposed central
110 sewerage system; evaluates whether the density required to
111 accommodate onsite sewage treatment and disposal systems would
112 meet the local government's comprehensive plan requirements for
113 density for the area and environmental protection of the local
114 government's surface and groundwater; and consideration of the

115 local government's obligations or reasonably anticipated
116 obligations for water body cleanup and protection under state or
117 federal programs. The results of such a study shall be included
118 in the resolution or ordinance required in subsection (1).
119 Section 5. Paragraphs (c), (d), and (e) are added to
120 subsection (2) of section 381.00655, Florida Statutes, to read:
121 381.00655 Connection of existing onsite sewage treatment
122 and disposal systems to central sewerage system; requirements.--
123 (2) The provisions of subsection (1) or any other
124 provision of law to the contrary notwithstanding:
125 (c) The owner of a performance-based onsite sewage
126 treatment and disposal system permitted by the department that
127 provides for treatment meeting advanced secondary treatment
128 standards shall not be required to connect to a publicly owned
129 or investor-owned sewerage system as long as the onsite system
130 is functioning properly and satisfying the conditions of the
131 operating permit.
132 (d) Paragraphs (c) shall not apply where:
133 1. The area is clearly subject to an existing sewer
134 utility or authority bond covenant or other financial
135 commitments which expressly provides and requires hook-up to the
136 central system and which was in effect on July 1, 2006;
137 2. The area is clearly subject to a state or federal
138 requirement or court order requiring hook up to a central sewer
139 system.
140 3. The area is located in Monroe County or any
141 municipality located therein.
142 4. The area is located within a basin containing a water
143 body listed pursuant to s. 303(d) of the Clean Water Act, Pub.
144 L. No. 99-500, 33 U.S.C. ss 1251 et seq.

145 5. The area is designated in a local comprehensive plan
146 as an urban service area.
147 Section 6. This act shall take effect July 1, 2006.
148
149
150 ========== T I T L E A M E N D M E N T ==========
151 Remove the entire title and insert:
152 An act relating to sewage treatment and disposal systems;
153 amending s. 153.54, F.S.; requiring county commissions to
154 include certain studies for the construction of a new
155 proposed sewerage system or the extension of an existing
156 sewerage system in certain reports; amending s. 153.73,
157 F.S.; requiring county water and sewer districts to
158 conduct certain studies for the construction of a new
159 proposed sewerage system or the extension of an existing
160 sewerage system prior to the levying of certain
161 assessments; amending s. 163.3180, F.S.; authorizing local
162 governments to use certain onsite sewage treatment and
163 disposal systems to meet certain concurrency requirements;
164 amending s. 180.03, F.S.; requiring municipalities to
165 conduct certain studies for the construction of a new
166 proposed sewerage system or the extension of an existing
167 sewerage system prior to the adoption of certain
168 resolutions or ordinances; amending s. 381.00655, F.S.;
169 exempting certain onsite sewage treatment and disposal
170 systems from connecting to a publicly owned or investor-
171 owned sewerage system under certain circumstances;
172 providing an effective date.
173
174

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Carrying of Firearms in National Forests
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
2) Environmental Regulation Committee		Perkins RP	Kliner
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm of any description within the limits of a national forest area (except during hunting season), without first obtaining a permit. Section 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Any person who violates any of the above provisions commits a second degree misdemeanor.

In regards to state parks, Department of Environmental Protection Rule 62D-2.014(10), F.A.C., currently prohibits persons from using, carrying, or possessing firearms of any type in any *state park* unless used for authorized resource management.

This bill repeals the statutes prohibiting persons from carrying firearms in *national forests*, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill also directs the Department of Environmental Protection to adopt amendments to Rule 62D-2.014(10), F.A.C., to repeal the provision prohibiting persons from using, carrying, or possessing firearms in state parks.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

National Forests & Wildlife Management Areas

The U.S. Department of Agriculture (USDA) Forest Service is a Federal agency that manages public lands in national forests and grasslands.[1] The Forest Service manages public lands, known collectively as the National Forest System, located in 44 States, Puerto Rico, and the Virgin Islands.[2] Nationwide, there are 155 national forests, which comprise 8.5 percent of the total land area in the United States.[3]

There are four national forests in Florida: Apalachicola, Choctawhatchee, Ocala, and Osceola National Forest.[4] According to the U.S. Department of Agriculture Forest Service, all of the National Forests in Florida are also Wildlife Management Areas (WMAs), which are regulated, in part, by Florida's Fish and Wildlife Conservation Commission (FWCC). The result of this dual-designation is that FWCC regulates the *wildlife*, while the USDA Forest Service regulates the *land* (e.g. resources, timber, hiking trails, etc...).

There do not appear to be any federal regulations specifically prohibiting persons from carrying firearms in National Forests. However, Title 36 of the Code of Federal Regulations, relating in part to National Forests, prohibits persons from *discharging* a firearm or any other implement capable of taking human life causing injury, or damaging property in or within 150 yards of a residence, building, campsite, developed recreation site, or occupied area; across or on a National Forest System road or a body of water adjacent thereto; or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge; or into or within any cave.[5] Additionally, in regards to hunting laws, the federal government defers to state hunting laws.[6]

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in WMAs. However, FWCC's rules currently prohibit persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director.[7] As a constitutionally created agency, the FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.[8]

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[1] http://www.fs.fed.us/aboutus/meetfs.shtml
[2] *Id.*
[3] *Id.*
[4] http://www.fs.fed.us/r8/florida/about
[5] 36 C.F.R. 261.10(d)
[6] 36 C.F.R. 261.8
[7] Rule 68A-15.004(6), F.A.C.
[8] Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla.3 DCA 1986); Whitehead v. Rogers, 223 So.2d 330 (Fla.1969); State ex rel. Griffin v. Sullivan, 158 Fla. 870, 30 So.2d 919 (1947); Price v. City of St. Petersburg, 158 Fla. 705, 29 So.2d 753 (1947).

Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm[9] of any description within the limits of a National Forest (except during hunting season), without first obtaining a permit.[10] Section 790.12, F.S. provides that the board of county commissioners of the county where such National Forest area is located may grant a special permit for the carrying of firearms.[11] However, the officer or employee of the United States Government in charge of such National Forest area must first recommend in writing that the permit should be granted.[12] Section 790.14, F.S., states that any person who violates any of the above provisions commits a second degree misdemeanor[13].

State Parks

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in *state parks*. However, the Department of Environmental Protection (DEP) has adopted rules that prohibit persons from using, carrying, or possessing firearms of any type in any *state park*[14] unless used for authorized resource management.[15]

Effect of the Bill

HB 1029 repeals ss. 790.11, 790.12, and 790.14, F.S., prohibiting persons from carrying firearms in *national forests*, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill amends the "Lawful ownership, possession, and use of firearms and other weapons" statute (s. 790.25, F.S.), deleting the references to ss. 790.11, 790.12, and 790.14, F.S.

HB 1029 also directs DEP to adopt amendments to Rule 62D-2.014(10), F.A.C., to repeal the provision prohibiting persons from using, carrying, or possessing firearms in state parks.

C. SECTION DIRECTORY:

Section 1. Repeals ss. 790.11, 790.12, and 790.14, F.S.

Section 2. Amending s. 790.25, F.S., correcting cross-references.

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[9] Section 790.001, F.S., defines "firearm" as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

[10] The statute provides an exception for carrying a gun or firearm on state roads when securely locked within a vehicle. *See* s. 790.11, F.S.

[11] If a national forest lies in more than one county, the permit must be granted by the board of county commissioners of each of the several counties involved before it is valid. *See* s. 790.12, F.S.

[12] s. 790.12, F.S. In 1997, the Office of General Counsel of the USDA issued a legal opinion regarding s. 790.012, F.S., (requiring counties to get a written recommendation from the U.S. Government employee in charge of the National Forest before issuing a permit allowing someone to carry a firearm in a National Forest). The opinion states that "Nothing in the language of s. 790.12 imposes an explicit or implied duty upon the Forest Service to make such recommendations. Furthermore, even assuming *arguendo* that s. 790.12 could reasonably be interpreted as requiring the Forest Service to make such recommendations, the Supremacy Clause of the United States Constitution would prevent its application." The opinion went on to recommend that the federal government not make any recommendations relating to permits discussed in s. 790.12, F.S.

[13] A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and by a fine of up to $500. *See* ss. 775.082 and 775.083, F.S.

[14] Florida's state park system is one of the largest in the country with 159 parks spanning more than 723,000 acres and 100 miles of beach. State parks include all real property in the State of Florida under the jurisdiction of the Florida Department of Environmental Protection, Division of Recreation and Parks, or which may come under its jurisdiction regardless of the property's designation. Among the designations included in the state park system are state park, state recreation area, state archaeological site, state historic site, state geological site, state botanical site, state preserve, state garden, state museum, state reserve, state cultural site, state wildlife park, state folk cultural center, and state trail. *See* Rule 62D-2.013(1), F.A.C.

[15] Rule 62D-2.014(10), F.A.C.

Section 3. Directing the Department of Environmental Protection to amend rules in the Florida Administrative Code.

Section 4. This act takes effect October 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:

   As noted above, s. 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Counties may lose permit revenue to the extent that persons are no longer required to obtain a permit to carry a firearm in a national forest. However, as noted in footnote 11 above, the federal government has, since 1997, declined to recommend that counties issue permits to carry firearms in National Forests. Thus, it would not appear that counties would incur a significant fiscal impact from a loss of permit revenue.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take 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:

This bill directs the Department of Environmental Protection to adopt amendments to Rule 62D-2.014(1), F.A.C., to repeal the provision that no person shall use, carry, or possess firearms in state parks.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by Criminal Justice Committee:
As noted above, the FWCC currently has a rule prohibiting persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director. Because all National Forests in Florida are also WMAs, the FWCC rule would apply in National Forests. Thus, even though the bill has the effect of removing the firearm prohibition in regards to National Forests, people would still be prohibited from carrying firearms in WMAs (and therefore National Forests). In order to effectuate the purpose of the bill (i.e. remove the prohibition on carrying firearms in National Forests), the bill should direct the FWCC to amend its rules (e.g. the bill could direct the FWCC to amend its rules to allow firearms in WMAs that are also National Forests).

The FWCC reports that, effective July 1, 2006, an amended version of its firearms rule will take effect. The amended rule would allow persons with concealed weapons permits to carry firearms in WMAs at any time. This amended rule would still conflict with the provisions of the bill in the manner described above.

It should be noted that repealing the statutes and rules prohibiting persons from carrying firearms in National Forests/WMAs and state parks does not mean that persons will automatically be able to openly carry weapons in such areas, carry concealed weapons in such areas without a permit, etc... The laws that apply to the carrying, use, etc... of firearms would apply (e.g. section 790.053, F.S., prohibiting persons from openly carrying firearms, would apply; s. 790.06, F.S., requiring a permit to carry a concealed weapon, would apply and require anyone in a National Forest/WMA or state park to have a permit to carry a concealed weapon).

It should also be noted that the bill does not affect the provisions of 36 C.F.R. 261.10(d), discussed above, relating to the *discharge* of a firearm in a National Forest.

Comments by Environmental Regulation Committee:
As stated earlier, the constitutionally created agency FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.[16]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

[16] Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla.3 DCA 1986); Whitehead v. Rogers, 223 So.2d 330 (Fla.1969); State ex rel. Griffin v. Sullivan, 158 Fla. 870, 30 So.2d 919 (1947); Price v. City of St. Petersburg, 158 Fla. 705, 29 So.2d 753 (1947).

1 A bill to be entitled
2 An act relating to the carrying of firearms in national
3 forests; repealing s. 790.11, F.S., which prohibits the
4 carrying of firearms in national forests; repealing s.
5 790.12, F.S., which authorizes the granting of a special
6 permit for the carrying of firearms in a national forest;
7 repealing s. 790.14, F.S., which provides a penalty for
8 violation of ss. 790.11 and 790.12, F.S.; amending s.
9 790.25, F.S.; correcting cross-references; directing the
10 Department of Environmental Protection to amend the
11 correlative rule in the Florida Administrative Code, to
12 conform; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Sections 790.11, 790.12, and 790.14, Florida
17 Statutes, are repealed.
18 Section 2. Paragraph (b) of subsection (2) of section
19 790.25, Florida Statutes, is amended to read:
20 790.25 Lawful ownership, possession, and use of firearms
21 and other weapons.--
22 (2) USES NOT AUTHORIZED.--
23 (b) The protections of this section do not apply to the
24 following:
25 1. A person who has been adjudged mentally incompetent,
26 who is addicted to the use of narcotics or any similar drug, or
27 who is a habitual or chronic alcoholic, or a person using

28 weapons or firearms in violation of ss. 790.07-790.115 ~~790.07-~~
29 ~~790.12~~, 790.145-790.19 ~~790.14-790.19~~, 790.22-790.24;
30 2. Vagrants and other undesirable persons as defined in s.
31 856.02;
32 3. A person in or about a place of nuisance as defined in
33 s. 823.05, unless such person is there for law enforcement or
34 some other lawful purpose.
35 Section 3. The Department of Environmental Protection is
36 directed to adopt amendments to rule 62D-2.014(10), Florida
37 Administrative Code, to repeal the provision that no person
38 shall use, carry, or possess firearms in state parks.
39 Section 4. This act shall take effect October 1, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Environmental Regulation
2 Committee
3 Representative(s) Baxley offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove lines 35 through 38 and insert:
7
8 Section 3. The Department of Environmental Protection
9 shall amend rule 62D-2.014(10), Florida Administrative Code, to
10 allow the possession of weapons in compliance with all
11 applicable Florida Statutes. The rule shall be amended to
12 indicate that such weapons shall be at all times in the
13 possession of a responsible party or properly secured within or
14 to a vehicle or temporary housing, which shall include motor
15 homes, travel trailers, recreational vehicles, campers, tents,
16 or other enclosed structures, while in state parks.
17
18
19 ========== T I T L E A M E N D M E N T ==========
20 Remove lines 9 through 12 and insert:
21

22 790.25, F.S.; correcting cross-references; requiring the
23 Department of Environmental Protection to amend the
24 correlative rule in the Florida Administrative Code to
25 allow the possession of weapons in compliance with all
26 Florida Statutes; providing requirements with respect to
27 amendment of the rule; providing an effective date.

HB 1533

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

Fiscal Impact: DEP reports if the number of reported discharges per year remains constant (an average of 648 annually), and 75 percent of them are cleaned up as part of the original discharge, the total state expense impact between 2006 and 2010 could be approximately $48,600,000.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation, in addition to the increase in state expense associated with the cleanup.

Safeguard Individual Liberty : The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation, in addition to the increase in state expense associated with the cleanup. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

Promote Personal Responsibility: The scope of petroleum related discharges that will require cleanup by state funded programs will likely increase as a result of this legislation, in addition to the increase in state expense associated with the cleanup. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

B. EFFECT OF PROPOSED CHANGES:

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

Florida relies on groundwater for about 92 percent of its drinking water needs, and has some of the most stringent water pollution rules in the country. To further the safeguards for the water system, all new and replacement petroleum storage tank systems must have secondary containment, and all remaining single-wall systems must replace their systems with secondary containment by the beginning of 2010. DEP contracts with counties to perform annual compliance inspections.[1]

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

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

- Policies are covering only discharges that can be shown to have occurred during the policy period. It is difficult to determine when a discharge occurred.
- The policy will cover only discharges from the storage system. If the system passes a tightness test, the insurer will deny coverage.

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

- The policies require that the discharges occur after a retroactive date. Again, it is difficult to prove when a discharge occurred.
- Some carriers have policy exclusions for contamination "arising from the removal" of a storage system. The exclusion also applies to discharges "arising from maintenance" activities. This further complicates the timely upgrading of tanks to secondary containment.[2]

The dominant environmental insurance carrier in Florida, AIG, will not write or renew coverage on older single-walled corrosion-resistant systems. The concern appears to be that when these single-walled containment systems are replaced with the required secondary containment systems, contamination will be discovered and claims will be filed. Great American and Mid-Continent Insurance companies are no longer writing coverage in Florida. Zurich Insurance will not write coverage if the insured plans to replace their underground storage tank systems within the next three years.[3]

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

In 2005, the Legislature provided funding for limited interim soil source removals for sites eligible for state funding that upgrade their underground petroleum storage tanks to secondary containment in advance of the site's priority ranking for cleanup. This was done in an effort to expedite the required secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline due to owners or operators being reluctant to replace their tanks ahead of their priority ranking. Owners and operators are reluctant to replace tanks because treating the contaminated soil is expensive and the Inland Protection Trust Fund (IPTF) will not pay for such treatment out of priority order.[4] As a result, the contaminated soil is often put back into the ground and cleanup occurs when the site's priority ranking comes due. However, even with the funding provisions enacted in 2005, many facility owners are still reluctant to upgrade their tanks early because their insurance carrier may cancel or refuse to renew their policies if they discover contamination and free product at the time of the upgrade, since it is difficult or impossible to distinguish between and "old discharge" that is eligible for state funding and the "new discharge" that the insurer must cover.

Effect of Proposed Change

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

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

Language in the bill acknowledges that it is difficult to distinguish between a discharge of petroleum products from a petroleum storage system which is eligible for state cleanup funding and which is not eligible for state cleanup funding. The bill stipulates that until a secondary containment upgrade of underground storage tanks is complete at a site, a subsequently discovered discharge at the site is presumed to be part of the original discharge that qualifies for state funding. However, the presumption does not apply:

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[2] HB 1735 CS, 2005

[3] Id.

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

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

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

The bill provides that regardless of the discharge presumption provided in the bill:
- Owners or operators are required to report all incidents or discharges to DEP
- Owners or operators are to provide copies of all storage tank and piping tightness tests regardless of the results to DEP.

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

DEP reports if the number of reported discharges per year remains constant (an average of 648), and 75 percent of them are cleaned up as part of the original discharge, the total expense impact between 2006 and 2010 could be approximately $48,600,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DEP estimates the economic benefits to the private sector will be approximately equal to the fiscal impact on the state. In addition, new discharges that are folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry as they will not have to fund the cleanups.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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.

1. Applicability of Municipality/County Mandates Provision:

2. Other: None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENVR 06-06 Derelict Vessels
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2128

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

SUMMARY ANALYSIS

The bill, relating to vessels, provides:

- Funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities, and derelict vessel removal.
- Authorization to marina owner or employee to take steps and charge reasonable fees to secure a vessel in a marina after the issuance of a tropical storm or hurricane watch has been issued and requires marina owners to give contractual notice of such authority.
- Local regulation of anchoring within mooring fields.
- Direction to the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.
- For the distribution of vessel registration fees to counties and specifies the utilization of such funds relating to boat access.
- Grant program funding for the removal of derelict vessels to local governments.
- For derelict vessels removal and authorization of such removal extended to all law enforcement officers.
- Exemption for certain floating vessel structures from environmental resource permitting.
- For a conforming amendment relating to the definition of derelict vessel as defined in statute and to provide technical changes.
- Provisions relating to abandoned and derelict vessels and the removal of such vessels, penalties for nonremoval of such vessels, and removal provisions for derelict vessels located on private property.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill provides local regulation of anchoring within mooring fields. The bill clarifies the definition of "derelict vessel" and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Safeguard Individual Liberty: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill authorizes local regulation of anchoring within mooring fields. The bill clarifies the definition of "derelict vessel" and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Promote Personal Responsibility: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill increases personal accountability to vessel owners to secure their vessels from marinas before the onset of a tropical storm or hurricane.

Maintain Public Security: The bill authorizes marinas to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

State Game Trust Fund
Section 206.606(1)(b), F.S., provides the State Game Trust Fund in the Fish and Wildlife Conservation Commission with $2.5 million each fiscal year from state taxes imposed on motor fuel to be used for recreational boating activities and freshwater fisheries management and research. A minimum of $1.25 million is directed to be utilized to fund local projects that provide recreational channel marking, public launching facilities, aquatic plant control, and other local boating activities.[1]

Vessel Securement During A Storm
Hurricanes can cause catastrophic damage to marinas and vessels. During a storm event, changes in wind direction and fluctuations in wind intensity, excessive rain and storm surge cause moored vessels to repeatedly collide with stationary docks, and often culminate in extensive damage assessments which may evolve into a dispute between the vessel owner and the marina owner. The dispute often hinges on whether the vessel caused damage to the dock, or whether the dock caused damage to the vessel during the storm.

Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina once a hurricane watch or warning has been issued.[2] A

[1] s. 206.606(1)(b)(1), F.S.
[2] s. 327.59, F.S.

hurricane watch is posted when hurricane conditions are possible within 36 hours and a *hurricane warning* is posted when hurricane conditions are expected within 24 hours. A *tropical storm watch* is posted when tropical storm conditions are expected within 36 hours.

In 1995, the aforementioned law, was challenged by a marina owner in circuit court and the case was dismissed. A subsequent appeal of the case upheld the lower court's dismissal (Burklow & Associates v. Belcher, 719 So.2d 31(1stDCA, 1995)). In that case, the marina owner sued the owners of sixteen vessels stored at the marina for breach of contract and negligence, seeking to recover damages allegedly caused by the vessel owners' failure to move their vessels from the marina before a hurricane had moved ashore. The Circuit Court dismissed the complaint and the marina owner appealed. The District Court of Appeal upheld the dismissal and found the following:

- The marina owner's complaint was within admiralty jurisdiction and that federal maritime law applied;
- Federal maritime law did not preempt section 327. 59, F.S., therefore marinas may not adopt, maintain, or enforce evacuation policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning; and
- Vessel owners had no duty to remove their vessels upon the request of the marina owner in the period prior the issuance of a hurricane watch or warning.

In the Burklow case, the District Court of Appeal further stated that an owner of a vessel which is lawfully docked at a marina, under a valid slip lease agreement that does not require the removal of a vessel in the event of a hurricane threat, does not owe a duty to the marina owner to remove his or her vessel upon the request of the marina owner during the period prior to the issuance of any hurricane watch or warning. The court stated that requiring such a duty was not logical given the insufficient probability, at any time prior to the issuance of an official hurricane watch or warning, of a hurricane causing a vessel owner's vessel to damage a marina. The court further stated that vessel owners whose vessels were stored at a marina did owe a duty to the marina owner to exercise reasonable care for the protection of the marina property, but that duty did not include any obligation to remove their vessel upon the request of the marina owner.

Vessel Mooring Field Regulation

Section 327.60 (2), F.S., prohibits local governments from regulating the anchoring of non-live aboard vessels in the exercise of rights of navigation. Public rights on navigable waters are not restricted to navigation in the strict sense, but include such incidental rights as are necessary to render the right of navigation as reasonably available. The incidental rights include the right of a vessel to anchor so long as it does not unreasonably obstruct navigation. If it is a live-aboard vessel or floating structure, cities and counties can regulate their anchoring and mooring up to a flat prohibition.

Section 327.02(15), F.S., defines "Live-aboard vessel" to mean:
(a) Any vessel used solely as a residence; or
(b) Any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence.
A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Vessel Owner Notification Requirements

Section 328.64, F.S., requires a vessel owner to the notify the Department of Highway Safety and Motor Vehicles when a vessel owner transfers all or any part of their interest in a vessel registered or titled in Florida.

Vessel Registration Fee Distribution

Section 328.72(15), F.S., provides for the distribution of vessel registration fees to be returned to the appropriate county for the sole purposes of providing recreational channel marking and public launching facilities and other boating-related activities, for removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation, and for

manatee and marine mammal protection and recovery. Counties are required to provide an annual detailed report to the FWCC no later than November 1 of each year that a portion of the registration fees were spent on boating infrastructure. The commission has the authority to provide an exemption letter by December 15 of each year for qualifying counties.

Florida Coastal Protection Trust Fund

The Florida Coastal Protection Trust Fund, section 376.11, F.S., establishes a mechanism to have financial resources currently available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages. Money in the fund may be used to fund a grant to coastal local governments for the removal of derelict vessels from public waters of the state.

Derelict Vessel Removal From Public Waters

Section 376.11., F.S., established the Derelict Vessel Removal Program in 1980 which is currently operated by the Florida Fish and Wildlife Conservation Commission (FWCC). The program is a financial assistance grant program, providing funds to coastal local governments for the reimbursement of the removal of derelict vessels from coastal waters of the state. Funding for the program is appropriated by the Legislature each fiscal year.

Sections 376.15 and 823.11, F. S., authorizes FWCC only to remove derelict vessels from waters of the state. City police departments and county sheriffs' departments are authorized to enforce all of Florida's laws pertaining to vessels and have the authority to arrest the owner for allowing the vessel to become or remain derelict. Currently, cities and counties wanting to remove derelicts must petition the FWCC for the delegation of authority to cause such removals. This restriction produces substantial delays in the removal of these vessels. The delays, in turn, increase the costs of removal as the derelicts continue to deteriorate.

Currently, FWCC reports there are 841 reported derelict vessel cases in Florida. This number may be low since all derelict vessels are not reported. Derelict vessels may pose navigational and environmental hazards. According to FWCC, some vessels become depository for hazardous materials and pose a safety and health threat to users of public waterways and the state's natural resources.

The FWCC has the authority to manage a grant program to assist counties with the removal of derelict vessels; however, the program has not been funded since 2002. The lack of funding for the removal of derelict vessels has forced local governments to utilize their own funds to remove such vessels or leave them in place. In meetings with the FWCC, some local governments have asked that their local officers be given the authority to declare vessels derelict, which would allow these governments to handle derelict vessels problems locally.

Floating Vessel Platforms or Floating Boat Lifts

Paragraph (s) of subsection (2) of s. 403.813, F.S., provides that a permit is not required for a floating vessel platform or floating boat lift if such structures:

- Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
- Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or, when associated with a dock that is exempt under s. 403.812(2), F.S., or a permitted dock with no defined boat slip, do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water;
- Are not used for commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including

locating such structures in areas where no sea grasses exist if such areas are present and adjacent to the dock; and

• Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and are not subject to any more stringent regulation by any local government. The Department of Environmental Protection is required to adopt a general permit, by rule, for those floating vessel platforms which do not qualify for the exemption, but do not cause significant adverse impacts to occur individually or cumulatively. The general permit constitutes permission to use or occupy lands owned by the Board of Trustees. No local government may impose a more stringent regulation on floating vessel platforms covered by the general permit.

Abandoned Property

Section 705.101, F.S., defines abandoned property as all tangible property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. Section 705.103(4), F.S., establishes procedures relating to abandoned property.

Effect of Proposed Change

State Game Trust Fund

The bill amends section 206.606, F.S., to direct funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal. The bill deletes reference to aquatic plant control projects from receiving funding under this section and deletes reference to repealed Florida Administrative Code (Rules 62D-5.031 – 62D5.036). Aquatic plant control is performed by the Department of Environmental Protection.

Vessel Securement During A Storm

The bill authorizes marina personnel to take reasonable actions to further secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The marinas may charge reasonable fees for securing the vessel and held harmless for any damage that occurs as a result of securing the vessel or from any damage incurred to a vessel from such storms or hurricanes. The bill provides that no immunity is granted to the marina for any intentional acts or negligence that causes damage to the vessel during the removal or storage under this act. The bill provides noticing criteria in the contractual agreement which may be utilized by the marina and the vessel owner relating to the removal of the vessel once a tropical storm or hurricane watch has been issued and provides that a time frame be established for such vessel removal.

Vessel Mooring Field Regulation

The bill amends section 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.

Vessel Owner Notification Requirements

Section 328.64(1), F.S., is amended to direct the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.

Vessel Registration Fee Distribution

The bill amends section 328.72(15), F. S., which provide for the distribution of vessel registration fees to counties. The bill provides for the distribution of such moneys to be returned to the counties for the express purposes of providing recreational channel marking and other uniform waterway markers, public boat ramps, lifts and hosts, marine railways, and other public boat launching facilities, derelict

vessel removal and removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation. The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures boat registration fees. The bill further provides that if the annual report is not submitted by January 1 of each calendar year, the tax collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

Florida Coastal Protection Trust Fund

The bill amends section 376.11, F.S., to allow derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Derelict Vessel Removal From Public Waters

The bill amends section 376.15, F.S., pertaining to derelict and abandoned vessels to conform the definition of derelict vessel in section 823.11, F. S. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

The bill amends the definition of derelict vessel in section 823.11, F.S., to mean any vessel, as defined in section 327.02, F.S., that is left, stored, or abandoned:

(a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state; or

(b) At any port in this state without the consent of the agency having jurisdiction thereof; or

(c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

The bill provides that it is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel within this state. The bill specifies which officers may remove such vessels and provides for funding of such removal by certain grants. The bill deletes a provision authorizing the FWCC to delegate authority for derelict vessel removal to local governments.

The bill provides that when a derelict vessel is docked or grounded at or beached upon the private property of another without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with certain notice requirements. The bill specifies that any person, firm, or corporation violating this act commits a misdemeanor of the first degree and shall be punished as provided by law. The court having jurisdiction over the criminal offense is authorized to impose civil penalties in addition to any sentence imposed for the criminal offense.

Floating Vessel Platforms or Floating Boat Lifts

The bill amends section 403.813(2)(s), F.S., to provide that the exemption for floating vessel platforms includes those that are associated with a permitted dock with no defined boat slip or are attached to a bulkhead on a parcel of land where there is no other docking structure and which do not exceed a combined total of 500 square feet or 200 square feet in Outstanding Florida Water. The bill requires all floating vessel platforms to be located where sea grasses adjacent to the dock or bulkhead are least dense. The bill provides that exempt floating vessel platforms are not subject to any permitting requirement, registration requirement, or other more stringent regulation by any local government.

Abandoned Property
The bill amends section 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S. The bill amends section 705.103(4), F.S., to provide a conforming amendment relating to vessels.

C. SECTION DIRECTORY:

Section 1 Amends s. 206.606, F.S., to provide funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal.

Section 2 Amends s. 327.59, F.S., to allow an authorized employee to take steps and charge reasonable fees to secure a vessel in a marina after the issuance of a tropical storm or hurricane watch has been issued and requires marina owners to give contractual notice of such authority.

Section 3 Amends s. 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.

Section 4 Amends s. 328.64, F.S., to provide direction to the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.

Section 5 Amends s. 328.72(15), F.S., provides for the distribution of vessel registration fees to counties and specifies the utilization of such funds relating to boat access.

Section 6 Amends s. 376.11(4)(g), F.S., to extend grant program funding for the removal of derelict vessels to local governments.

Section 7 Amends s. 376.15, F.S., relating to derelict vessels removal and authorization of such removal extended to all law enforcement officers.

Section 8 Amends s. 403.813(2)(s), F.S., to exempt certain floating vessel structures from environmental resource permitting.

Section 9 Amends s. 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S.

Section 10 Amends s. 705.103(4), F.S., to provide technical change for clarification relating to vessels.

Section 11 Amends s. 823.11, F.S., to revise provisions relating to abandoned and derelict vessels and the removal of such vessels; to provide penalties for nonremoval of such vessels; and to provide removal provisions for derelict vessels located on private property.

Section 12 Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

State government may experience a cost savings as a result of expediting the removal of derelict vessels.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill extends disbursal of grant funds dedicated to cleanup and removal of derelict vessels to all local governments.

2. Expenditures:

Authorized local law enforcement officers are authorized to remove any abandoned or derelict vessels. The bill provides that removal costs are recoverable against the vessel owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The vessel owner who fails to remove its vessel from the marina after a tropical storm or hurricane watch has been issued may incur an expense imposed by the marina to remove such vessel.

The exemption for floating vessel platforms is expanded to allow those platforms attached to a bulkhead or a parcel of land where no other docking structures exists and may allow for more floating vessel platforms to qualify for a permit exemption.

D. FISCAL COMMENTS:

The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures of the boat registration fees. The bill provides that if the annual report is not submitted by January 1 of each calendar year, the tax collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

FWCC reports the fiscal impact of this legislation to be negligible.[3]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None.

B. RULE-MAKING AUTHORITY:

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

[3] FWCC Bill Analysis

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to vessels; amending s. 206.606, F.S.;
3 authorizing the use of certain funds for local boating
4 related projects and activities; amending s. 327.59, F.S.;
5 authorizing marina owners, operators, employees, and
6 agents to take actions to secure vessels during severe
7 weather and to charge fees and be held harmless for such
8 service; holding marina operators, employees, and agents
9 liable for damage caused by intentional acts or negligence
10 while removing or securing vessels; authorizing contract
11 provisions and notice relating to removing or securing
12 vessels; amending s. 327.60, F.S.; providing for local
13 regulation of anchoring within mooring fields; amending s.
14 328.64, F.S.; requiring the Department of Highway Safety
15 and Motor Vehicles to provide forms for certain
16 notification related to vessels; requiring the department
17 to provide by rule for the surrender and replacement of
18 certificates of registration to reflect change of address;
19 amending s. 328.72, F.S.; requiring counties to use funds
20 for specific boating related purposes; requiring counties
21 to provide reports demonstrating specified expenditure of
22 such funds; providing penalties for failure to comply;
23 amending s. 376.11, F.S.; authorizing the distribution of
24 revenues from the Florida Coastal Protection Trust Fund to
25 all local governments for the removal of certain vessels;
26 amending s. 376.15, F.S.; revising provisions relating to
27 the removal of abandoned and derelict vessels; specifying
28 officers authorized to remove such vessels; providing that
29 certain costs are recoverable; requiring the Department of

30 Legal Affairs to represent the Fish and Wildlife
31 Conservation Commission in certain actions; expanding
32 eligibility for disbursement of grant funds for the
33 removal of certain vessels; amending s. 403.813, F.S.;
34 providing exemptions from permitting, registration, and
35 regulation of floating vessel platforms or floating boat
36 lifts by a local government; amending s. 705.101, F.S.;
37 revising the definition of "abandoned property" to include
38 certain vessels; amending s. 705.103, F.S.; revising the
39 terminology relating to abandoned or lost property to
40 conform; amending s. 823.11, F.S.; revising provisions
41 relating to abandoned and derelict vessels and the removal
42 of such vessels; providing a definition of "derelict
43 vessel"; specifying which officers may remove such
44 vessels; providing that vessel removal may be funded by
45 certain grants; requiring the Department of Legal Affairs
46 to represent the Fish and Wildlife Conservation Commission
47 in certain actions; deleting a provision authorizing the
48 commission to delegate certain authority to local
49 governments under certain circumstances; authorizing
50 private property owners to remove certain vessels with
51 required notice; providing that cost of such removal is
52 recoverable; prohibiting private property owners from
53 hindering the removal of certain vessels by vessel owners
54 or agents; providing for jurisdictional imposition of
55 civil penalties for violations relating to certain
56 vessels; providing an effective date.
57
58 Be It Enacted by the Legislature of the State of Florida:

59

60 Section 1. Paragraph (b) of subsection (1) of section
61 206.606, Florida Statutes, is amended to read:
62 206.606 Distribution of certain proceeds.--
63 (1) Moneys collected pursuant to ss. 206.41(1)(g) and
64 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust
65 Fund. Such moneys, after deducting the service charges imposed by
66 s. 215.20, the refunds granted pursuant to s. 206.41, and the
67 administrative costs incurred by the department in collecting,
68 administering, enforcing, and distributing the tax, which
69 administrative costs may not exceed 2 percent of collections,
70 shall be distributed monthly to the State Transportation Trust
71 Fund, except that:
72 (b) $2.5 million shall be transferred to the State Game
73 Trust Fund in the Fish and Wildlife Conservation Commission in
74 each fiscal year and used for recreational boating activities,
75 and freshwater fisheries management and research. The transfers
76 must be made in equal monthly amounts beginning on July 1 of each
77 fiscal year. The commission shall annually determine where unmet
78 needs exist for boating-related activities, and may fund such
79 activities in counties where, due to the number of vessel
80 registrations, sufficient financial resources are unavailable.
81 1. A minimum of $1.25 million shall be used to fund local
82 projects to provide recreational channel marking <u>and other</u>
83 <u>uniform waterway markers, public boat ramps, lifts, and hoists,</u>
84 <u>marine railways, and other</u>~~,~~ public launching facilities, <u>derelict</u>
85 <u>vessel removal</u> ~~aquatic plant control~~, and other local boating
86 related activities. In funding the projects, the commission shall
87 give priority consideration as follows:

88 a. Unmet needs in counties with populations of 100,000 or
89 less.
90 b. Unmet needs in coastal counties with a high level of
91 boating related activities from individuals residing in other
92 counties.
93 2. The remaining $1.25 million may be used for recreational
94 boating activities and freshwater fisheries management and
95 research.
96 3. The commission is authorized to adopt rules pursuant to
97 ss. 120.536(1) and 120.54 to implement a Florida Boating
98 Improvement Program ~~similar to the program administered by the~~
99 ~~Department of Environmental Protection and established in rules~~
100 ~~62D-5.031 - 62D-5.036, Florida Administrative Code, to determine~~
101 ~~projects eligible for funding under this subsection~~.
102
103 On February 1 of each year, the commission shall file an annual
104 report with the President of the Senate and the Speaker of the
105 House of Representatives outlining the status of its Florida
106 Boating Improvement Program, including the projects funded, and a
107 list of counties whose needs are unmet due to insufficient
108 financial resources from vessel registration fees.
109 Section 2. Section 327.59, Florida Statutes, is amended to
110 read:
111 327.59 Marina evacuations.--
112 (1) After June 1, 1994, marinas may not adopt, maintain, or
113 enforce policies pertaining to evacuation of vessels which
114 require vessels to be removed from marinas following the issuance
115 of a hurricane watch or warning, in order to ensure that
116 protecting the lives and safety of vessel owners is placed before

117 interests of protecting property.
118 (2) Nothing in this section may be construed to restrict
119 the ability of an owner of a vessel or the owner's authorized
120 representative to remove a vessel voluntarily from a marina at
121 any time or to restrict a marina owner from dictating the kind of
122 cleats, ropes, fenders, and other measures that must be used on
123 vessels as a condition of use of a marina. After a tropical storm
124 or hurricane watch has been issued, a marina owner or operator,
125 or an employee or agent of such owner or operator, may take
126 reasonable actions to further secure any vessel within the marina
127 to minimize damage to a vessel and to protect marina property,
128 private property, and the environment and may charge a reasonable
129 fee for such services.
130 (3) Notwithstanding any other provisions of this section,
131 in order to minimize damage to a vessel and to protect marina
132 property, private property, and the environment, a marina owner
133 may provide by contract that in the event a vessel owner fails to
134 promptly remove a vessel from a marina after a tropical storm or
135 hurricane watch has been issued, the marina owner, operator,
136 employee, or agent may remove the vessel, if feasible, from its
137 slip or take whatever reasonable actions are deemed necessary to
138 properly secure a vessel to minimize damage to a vessel and to
139 protect marina property, private property, and the environment
140 and may charge the vessel owner a reasonable fee for any such
141 services rendered. In order to add such a provision to a
142 contract, the marina owner must provide notice to the vessel
143 owner in any such contract in a font size of at least 10 points
144 and in substantially the following form:
145

146 NOTICE TO VESSEL OWNER
147
148 The undersigned hereby informs you that in the event you fail to
149 remove your vessel from the marina promptly (timeframe to be
150 determined between the marina owner or operator and the vessel
151 owner) after the issuance of a tropical storm or hurricane watch
152 for (insert geographic area), Florida, under Florida law, the
153 undersigned or his or her employees or agents are authorized to
154 remove your vessel, if feasible, from its slip or take any and
155 all other reasonable actions deemed appropriate by the
156 undersigned or his or her employees or agents in order to better
157 secure your vessel and to protect marina property, private
158 property, and the environment. You are further notified that you
159 may be charged a reasonable fee for any such action.
160 (4) A marina owner, operator, employee, or agent shall not
161 be held liable for any damage incurred to a vessel from storms or
162 hurricanes and is held harmless as a result of such actions.
163 Nothing in this section may be construed to provide immunity to a
164 marina operator, employee, or agent for any damage caused by
165 intentional acts or negligence when removing or securing a vessel
166 as permitted under this section.
167 Section 3. Subsection (2) of section 327.60, Florida
168 Statutes, is amended to read:
169 327.60 Local regulations; limitations.--
170 (2) Nothing contained in the provisions of this section
171 shall be construed to prohibit local governmental authorities
172 from the enactment or enforcement of regulations which prohibit
173 or restrict the mooring or anchoring of floating structures or
174 live-aboard vessels within their jurisdictions or of any vessels

175 within the marked boundaries of mooring fields permitted as
176 provided in s. 327.40. However, local governmental authorities
177 are prohibited from regulating the anchoring outside of such
178 mooring fields ~~anchorage~~ of non-live-aboard vessels ~~engaged~~ in
179 ~~the exercise of rights of~~ navigation.
180 Section 4. Section 328.64, Florida Statutes, is amended to
181 read:
182 328.64 Change of interest and address.--
183 (1) The owner shall furnish the Department of Highway
184 Safety and Motor Vehicles notice of the transfer of all or any
185 part of his or her interest in a vessel registered or titled in
186 this state pursuant to this chapter or chapter 328 or of the
187 destruction or abandonment of such vessel, within 30 days
188 thereof, on a form prescribed by the department. Such transfer,
189 destruction, or abandonment shall terminate the certificate for
190 such vessel, except that in the case of a transfer of a part
191 interest which does not affect the owner's right to operate such
192 vessel, such transfer shall not terminate the certificate. The
193 department shall provide the form for such notice and shall
194 attach the form to every vessel title issued or reissued.
195 (2) Any holder of a certificate of registration shall
196 notify the Department of Highway Safety and Motor Vehicles or the
197 county tax collector within 30 days, if his or her address no
198 longer conforms to the address appearing on the certificate and
199 shall, as a part of such notification, furnish the department or
200 such county tax collector with the new address. The department
201 shall ~~may~~ provide in its rules and regulations for the surrender
202 of the certificate bearing the former address and its replacement
203 with a certificate bearing the new address or for the alteration

204 of an outstanding certificate to show the new address of the
205 holder.
206 Section 5. Subsection (15) of section 328.72, Florida
207 Statutes, is amended to read:
208 328.72 Classification; registration; fees and charges;
209 surcharge; disposition of fees; fines; marine turtle stickers.--
210 (15) DISTRIBUTION OF FEES.--Except for the first $2, $1 of
211 which shall be remitted to the state for deposit into the Save
212 the Manatee Trust Fund created within the Fish and Wildlife
213 Conservation Commission and $1 of which shall be remitted to the
214 state for deposit into the Marine Resources Conservation Trust
215 Fund to fund a grant program for public launching facilities,
216 pursuant to s. 327.47, giving priority consideration to counties
217 with more than 35,000 registered vessels, moneys designated for
218 the use of the counties, as specified in subsection (1), shall be
219 distributed by the tax collector to the board of county
220 commissioners for use only as provided in this section. Such
221 moneys to be returned to the counties are for the sole purposes
222 of providing recreational channel marking and other uniform
223 waterway markers, public boat ramps, lifts, and hoists, marine
224 railways, and other public launching facilities, derelict vessel
225 removal, and ~~other boating-related activities, for~~ removal of
226 vessels and floating structures deemed a hazard to public safety
227 and health for failure to comply with s. 327.53~~, and for manatee~~
228 ~~and marine mammal protection and recovery~~. Counties shall ~~that~~
229 demonstrate through an annual detailed accounting report of
230 vessel registration revenues that ~~at least $1 of~~ the registration
231 fees were spent as provided in this subsection ~~on boating~~
232 ~~infrastructure shall only be required to transfer the first $1 of~~

233 ~~the fees to the Save the Manatee Trust Fund~~. This report shall be
234 provided to the Fish and Wildlife Conservation Commission no
235 later than November 1 of each year. If, prior to January 1 of
236 each calendar year, the annual detailed accounting report meeting
237 the prescribed criteria has still not been provided to the
238 commission, the tax collector of that county shall not distribute
239 the moneys designated for the use of counties, as specified in
240 subsection (1), to the board of county commissioners but shall,
241 instead, for the next calendar year, remit such moneys to the
242 state for deposit into the Marine Resources Conservation Trust
243 Fund. The commission shall return those moneys to the county if
244 the county fully complies with this section within that calendar
245 year. If the county does not fully comply with this section
246 within that calendar year, the moneys shall remain within the
247 Marine Resources Trust Fund and may be appropriated for the
248 purposes specified in this subsection ~~The commission shall~~
249 ~~provide an exemption letter to the department by December 15 of~~
250 ~~each year for qualifying counties~~.
251 Section 6. Paragraph (g) of subsection (4) of section
252 376.11, Florida Statutes, is amended to read:
253 376.11 Florida Coastal Protection Trust Fund.--
254 (4) Moneys in the Florida Coastal Protection Trust Fund
255 shall be disbursed for the following purposes and no others:
256 (g) The funding of a grant program to ~~coastal~~ local
257 governments, pursuant to s. 376.15(2)(b) and (c), for the removal
258 of derelict vessels from the public waters of the state.
259 Section 7. Section 376.15, Florida Statutes, is amended to
260 read:
261 376.15 Derelict vessels; removal from public waters.--

262 (1) It is unlawful for any person, firm, or corporation to
263 store, leave, or abandon any derelict vessel as defined in s.
264 823.11(1) in this state ~~or leave any vessel in a wrecked, junked,~~
265 ~~or substantially dismantled condition or abandoned upon any~~
266 ~~public waters or at any port in this state without the consent of~~
267 ~~the agency having jurisdiction thereof or docked at any private~~
268 ~~property without the consent of the owner of the private~~
269 ~~property~~.
270 (2)(a) The Fish and Wildlife Conservation Commission and
271 its officers and all law enforcement officers as specified in s.
272 327.70 are ~~is hereby designated as the agency of the state~~
273 authorized and empowered to remove any derelict vessel as defined
274 in s. 823.11(1) ~~described in subsection (1)~~ from public waters.
275 All costs incurred by the commission or other law enforcement
276 agency in the removal of any abandoned or derelict vessel shall
277 be recoverable against the owner of the vessel. The Department of
278 Legal Affairs shall represent the commission in such actions.
279 (b) The commission may establish a program to provide
280 grants to ~~coastal~~ local governments for the removal of derelict
281 vessels from the public waters of the state. The program shall be
282 funded from the Florida Coastal Protection Trust Fund.
283 Notwithstanding the provisions in s. 216.181(11), funds available
284 for grants may only be authorized by appropriations acts of the
285 Legislature.
286 (c) The commission shall adopt by rule procedures for
287 submitting a grant application and criteria for allocating
288 available funds. Such criteria shall include, but not be limited
289 to, the following:

290 1. The number of derelict vessels within the jurisdiction
291 of the applicant.
292 2. The threat posed by such vessels to public health or
293 safety, the environment, navigation, or the aesthetic condition
294 of the general vicinity.
295 3. The degree of commitment of the local government to
296 maintain waters free of abandoned and derelict vessels and to
297 seek legal action against those who abandon vessels in the waters
298 of the state.
299 (d) This section shall constitute the authority ~~of the~~
300 ~~commission~~ for such removal, but is not intended to be in
301 contravention of any applicable federal act.
302 ~~(e) The Department of Legal Affairs shall represent the~~
303 ~~Fish and Wildlife Conservation Commission in such actions.~~
304 Section 8. Paragraph (s) of subsection (2) of section
305 403.813, Florida Statutes, is amended to read:
306 403.813 Permits issued at district centers; exceptions.--
307 (2) A permit is not required under this chapter, chapter
308 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter
309 25270, 1949, Laws of Florida, for activities associated with the
310 following types of projects; however, except as otherwise
311 provided in this subsection, nothing in this subsection relieves
312 an applicant from any requirement to obtain permission to use or
313 occupy lands owned by the Board of Trustees of the Internal
314 Improvement Trust Fund or any water management district in its
315 governmental or proprietary capacity or from complying with
316 applicable local pollution control programs authorized under this
317 chapter or other requirements of county and municipal
318 governments:

319 (s) The construction, installation, operation, or
320 maintenance of floating vessel platforms or floating boat lifts,
321 provided that such structures:
322 1. Float at all times in the water for the sole purpose of
323 supporting a vessel so that the vessel is out of the water when
324 not in use;
325 2. Are wholly contained within a boat slip previously
326 permitted under ss. 403.91-403.929, 1984 Supplement to the
327 Florida Statutes 1983, as amended, or part IV of chapter 373, or
328 do not exceed a combined total of 500 square feet, or 200 square
329 feet in an Outstanding Florida Water, when associated with a dock
330 that is exempt under this subsection or associated with a
331 permitted dock with no defined boat slip or attached to a
332 bulkhead on a parcel of land where there is no other docking
333 structure~~, do not exceed a combined total of 500 square feet, or~~
334 ~~200 square feet in an Outstanding Florida Water~~;
335 3. Are not used for any commercial purpose or for mooring
336 vessels that remain in the water when not in use, and do not
337 substantially impede the flow of water, create a navigational
338 hazard, or unreasonably infringe upon the riparian rights of
339 adjacent property owners, as defined in s. 253.141;
340 4. Are constructed and used so as to minimize adverse
341 impacts to submerged lands, wetlands, shellfish areas, aquatic
342 plant and animal species, and other biological communities,
343 including locating such structures in areas where ~~no~~ seagrasses
344 are least dense ~~exist if such areas are present~~ adjacent to the
345 dock or bulkhead; and
346 5. Are not constructed in areas specifically prohibited for
347 boat mooring under conditions of a permit issued in accordance

348 with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
349 1983, as amended, or part IV of chapter 373, or other form of
350 authorization issued by a local government.
351
352 Structures that qualify for this exemption are relieved from any
353 requirement to obtain permission to use or occupy lands owned by
354 the Board of Trustees of the Internal Improvement Trust Fund and
355 shall not be subject to any permitting requirements, registration
356 requirements, or other more stringent regulation by any local
357 government. The exemption provided in this paragraph shall be in
358 addition to the exemption provided in paragraph (b). ~~By January~~
359 ~~1, 2003,~~ The department shall adopt a general permit by rule for
360 the construction, installation, operation, or maintenance of
361 those floating vessel platforms or floating boat lifts that do
362 not qualify for the exemption provided in this paragraph but do
363 not cause significant adverse impacts to occur individually or
364 cumulatively. The issuance of such general permit shall also
365 constitute permission to use or occupy lands owned by the Board
366 of Trustees of the Internal Improvement Trust Fund. ~~Upon the~~
367 ~~adoption of the rule creating such general permit,~~ No local
368 government shall impose a more stringent regulation, permitting
369 requirement, or registration requirement on floating vessel
370 platforms or floating boat lifts covered by such general permit.
371 Section 9. Subsection (3) of section 705.101, Florida
372 Statutes, is amended to read:
373 705.101 Definitions.--As used in this chapter:
374 (3) "Abandoned property" means all tangible personal
375 property that does not have an identifiable owner and that has
376 been disposed on public property in a wrecked, inoperative, or

377 partially dismantled condition or has no apparent intrinsic value
378 to the rightful owner. The term includes derelict vessels as
379 defined in s. 823.11(1) ~~Vessels determined to be derelict by the~~
380 ~~Fish and Wildlife Conservation Commission or a county or~~
381 ~~municipality in accordance with the provisions of s. 823.11 are~~
382 ~~included within this definition~~.
383 Section 10. Subsection (4) of section 705.103, Florida
384 Statutes, is amended to read:
385 705.103 Procedure for abandoned or lost property.--
386 (4) The owner of any abandoned or lost property who, after
387 notice as provided in this section, does not remove such property
388 within the specified period shall be liable to the law
389 enforcement agency for all costs of removal, storage, and
390 destruction of such property, less any salvage value obtained by
391 disposal of the property. Upon final disposition of the property,
392 the law enforcement officer shall notify the owner, if known, of
393 the amount owed. In the case of an abandoned vessel ~~boat~~ or motor
394 vehicle, any person who neglects or refuses to pay such amount is
395 not entitled to be issued a certificate of registration for such
396 vessel ~~boat~~ or motor vehicle, or any other vessel ~~boat~~ or motor
397 vehicle, until such costs have been paid. The law enforcement
398 officer shall supply the Department of Highway Safety and Motor
399 Vehicles with a list of persons whose vessel ~~boat~~ registration
400 privileges or whose motor vehicle privileges have been revoked
401 under this subsection. Neither the department nor any other
402 person acting as agent thereof shall issue a certificate of
403 registration to a person whose vessel ~~boat~~ or motor vehicle
404 registration privileges have been revoked, as provided by this
405 subsection, until such costs have been paid.

406 Section 11. Section 823.11, Florida Statutes, is amended to
407 read:
408 823.11 Abandoned and derelict vessels; removal; penalty.--
409 (1) "Derelict vessel" means any vessel, as defined in s.
410 327.02, that is left stored or abandoned:
411 (a) In a wrecked, junked, or substantially dismantled
412 condition upon any public waters of this state.
413 (b) At any port in this state without the consent of the
414 agency having jurisdiction thereof.
415 (c) Docked or grounded at or beached upon the property of
416 another without the consent of the owner of the property.
417 (2) It is unlawful for any person, firm, or corporation to
418 store, leave, or abandon any derelict vessel as defined in this
419 section in this state ~~or leave any vessel as defined by maritime~~
420 ~~law in a wrecked, junked, or substantially dismantled condition~~
421 ~~or abandoned upon or in any public water or at any port in this~~
422 ~~state without the consent of the agency having jurisdiction~~
423 ~~thereof, or docked at any private property without the consent of~~
424 ~~the owner of such property~~.
425 (3)(a) ~~(2)~~ The Fish and Wildlife Conservation Commission and
426 its officers and all law enforcement officers as specified in s.
427 327.70 are ~~is designated as the agency of the state~~ authorized
428 and empowered to remove or cause to be removed any abandoned or
429 derelict vessel from public waters in any instance when the same
430 obstructs or threatens to obstruct navigation or in any way
431 constitutes a danger to the environment. Removal of vessels
432 pursuant to this section may be funded by grants provided in ss.
433 206.606 and 376.15. Derelict vessels may be removed from public
434 waters or other public property as provided in s. 705.103. All

435 costs incurred by the commission or other law enforcement agency
436 in the removal of any abandoned or derelict vessel as set out
437 above shall be recoverable against the owner thereof. The
438 Department of Legal Affairs shall represent the commission in
439 such actions. As provided in s. 705.103(4), any person who
440 neglects or refuses to pay such amount is not entitled to be
441 issued a certificate of registration for such vessel or for any
442 other vessel or motor vehicle until the costs have been paid.
443 (b) When a derelict vessel is docked or grounded at or
444 beached upon private property without the consent of the owner of
445 the property, the owner of the property may remove the vessel at
446 the vessel owner's expense 60 days after compliance with the
447 notice requirements specified in s. 328.17(5). The private
448 property owner may not hinder reasonable efforts by the vessel
449 owner or agent to remove the vessel. Any notice given pursuant to
450 this paragraph shall be presumed delivered when it is deposited
451 with the United States Postal Service, certified, and properly
452 addressed with prepaid postage. ~~Pursuant to an agreement with the~~
453 ~~governing body of a county or municipality, and upon a finding by~~
454 ~~the commission that the county or municipality is competent to~~
455 ~~undertake said responsibilities, the commission may delegate to~~
456 ~~the county or municipality its authority to remove or cause to be~~
457 ~~removed an abandoned or derelict vessel from public waters within~~
458 ~~the county or municipality.~~
459 (4) ~~(3)~~ Any person, firm, or corporation violating this act
460 commits ~~is guilty of~~ a misdemeanor of the first degree and shall
461 be punished as provided by law. Conviction under this section
462 shall not bar the assessment and collection of the civil penalty
463 provided in s. 376.16 for violation of s. 376.15. The court

464 having jurisdiction over the criminal offense, notwithstanding
465 any jurisdictional limitations on the amount in controversy, may
466 order the imposition of such civil penalty in addition to any
467 sentence imposed for the first criminal offense.
468 Section 12. This act shall take effect July 1, 2006.

PCB 06-07

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

Rules shall:

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

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

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

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

Stormwater

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

Isolated wetlands

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

Effect of Proposed Changes

The bill provides a phased approach for implementation of ERP in NW Florida that:

(1) Requires the DEP and the NWFWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for

(a) Stormwater management by January 1, 2007, and
(b) MSSW, by January 1, 2008.

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

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

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

(3) Grandfathers:

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

(4) Provides statutory exemptions common to the other four WMDs, excluding exemption from the Harris Act; and

(5) Deletes statutory exemptions for the NWFWMD from the ERP.

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

- Prohibits a local government from adopting or enforcing an ordinance or policy that prohibits or restricts mitigation that offsets construction impacts pursuant to Part IV of Chapter 373. The amendment also requires that a local government ordinance that regulates construction in

wetlands to consider measures "proposed by or acceptable to the applicant" to mitigate adverse effects.

- Prohibits a local government in the NWFWMD from adopting or enforcing a wetland regulatory program or criteria that is more stringent or duplicative of the ERP program once it is enacted.[1]

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

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

C. SECTION DIRECTORY:

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

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

Section 3. Provides an appropriation.

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

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:	FY 06-07	FY 07-08	FY 08-09
Water Management Lands Trust Fund	($2.74 million)	($1.72 million)	($1.72 million)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

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

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to environmental permitting; amending s.
3 373.414, F.S.; limiting local government authority to
4 prohibit mitigation of certain wetlands activities;
5 prohibiting certain local government resource permitting
6 in the Northwest Florida Water Management District;
7 reenacting and amending s. 373.4145, F.S.; requiring the
8 district and the Department of Environmental Protection to
9 jointly develop rules for the regulation of certain
10 activities related to stormwater management systems and
11 the management and storage of surface waters; requiring
12 the district and the department to streamline federal and
13 state wetland permitting programs and to implement such
14 measures; requiring certain exemptions and provisions for
15 rules relating to certain dwellings; requiring the
16 department and the district to enter into an operating
17 agreement for the implementation of certain provisions;
18 requiring the district to be responsible for the
19 regulation and local delegation of certain activities;
20 repealing certain provisions upon the adoption of rules;
21 repealing s. 4 of chapter 2005-273, Laws of Florida, and
22 s. 32 of chapter 2005-71, Laws of Florida, which specified
23 dates certain for the repeal of certain provisions
24 relating to permitting in the district; providing an
25 appropriation; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (b) of subsection (1) of section
30 373.414, Florida Statutes, is amended to read:
31 373.414 Additional criteria for activities in surface
32 waters and wetlands.--
33 (1) As part of an applicant's demonstration that an
34 activity regulated under this part will not be harmful to the
35 water resources or will not be inconsistent with the overall
36 objectives of the district, the governing board or the department
37 shall require the applicant to provide reasonable assurance that
38 state water quality standards applicable to waters as defined in
39 s. 403.031(13) will not be violated and reasonable assurance that
40 such activity in, on, or over surface waters or wetlands, as
41 delineated in s. 373.421(1), is not contrary to the public
42 interest. However, if such an activity significantly degrades or
43 is within an Outstanding Florida Water, as provided by department
44 rule, the applicant must provide reasonable assurance that the
45 proposed activity will be clearly in the public interest.
46 (b) If the applicant is unable to otherwise meet the
47 criteria set forth in this subsection, the governing board or the
48 department, in deciding to grant or deny a permit, shall consider
49 measures proposed by or acceptable to the applicant to mitigate
50 adverse effects that may be caused by the regulated activity.
51 <u>Local governments may not adopt or enforce ordinances,</u>
52 <u>resolutions, regulations, or policies that prohibit or restrict</u>
53 <u>mitigation that offsets wetland construction impacts pursuant to</u>
54 <u>this part. Any local government ordinance or regulation intended</u>
55 <u>to regulate construction in wetlands or surface waters shall</u>
56 <u>consider measures proposed by or acceptable to the applicant to</u>
57 <u>mitigate adverse effects that may be caused by the regulated</u>

58 activity. Such measures may include, but are not limited to,
59 onsite mitigation, offsite mitigation, offsite regional
60 mitigation, and the purchase of mitigation credits from
61 mitigation banks permitted under s. 373.4136. It shall be the
62 responsibility of the applicant to choose the form of mitigation.
63 The mitigation must offset the adverse effects caused by the
64 regulated activity. Local governments within the geographical
65 jurisdiction of the Northwest Florida Water Management District
66 shall not adopt or enforce wetland regulatory programs or
67 criteria more stringent than or duplicative of the environmental
68 resource permitting program enacted pursuant to s. 373.4145(1).
69 1. The department or water management districts may accept
70 the donation of money as mitigation only where the donation is
71 specified for use in a duly noticed environmental creation,
72 preservation, enhancement, or restoration project, endorsed by
73 the department or the governing board of the water management
74 district, which offsets the impacts of the activity permitted
75 under this part. However, the provisions of this subsection shall
76 not apply to projects undertaken pursuant to s. 373.4137 or
77 chapter 378. Where a permit is required under this part to
78 implement any project endorsed by the department or a water
79 management district, all necessary permits must have been issued
80 prior to the acceptance of any cash donation. After the effective
81 date of this act, when money is donated to either the department
82 or a water management district to offset impacts authorized by a
83 permit under this part, the department or the water management
84 district shall accept only a donation that represents the full
85 cost to the department or water management district of
86 undertaking the project that is intended to mitigate the adverse

87 impacts. The full cost shall include all direct and indirect
88 costs, as applicable, such as those for land acquisition, land
89 restoration or enhancement, perpetual land management, and
90 general overhead consisting of costs such as staff time,
91 building, and vehicles. The department or the water management
92 district may use a multiplier or percentage to add to other
93 direct or indirect costs to estimate general overhead. Mitigation
94 credit for such a donation shall be given only to the extent that
95 the donation covers the full cost to the agency of undertaking
96 the project that is intended to mitigate the adverse impacts.
97 However, nothing herein shall be construed to prevent the
98 department or a water management district from accepting a
99 donation representing a portion of a larger project, provided
100 that the donation covers the full cost of that portion and
101 mitigation credit is given only for that portion. The department
102 or water management district may deviate from the full cost
103 requirements of this subparagraph to resolve a proceeding brought
104 pursuant to chapter 70 or a claim for inverse condemnation.
105 Nothing in this section shall be construed to require the owner
106 of a private mitigation bank, permitted under s. 373.4136, to
107 include the full cost of a mitigation credit in the price of the
108 credit to a purchaser of said credit.
109 2. The department and each water management district shall
110 report by March 1 of each year, as part of the consolidated
111 annual report required by s. 373.036(7), all cash donations
112 accepted under subparagraph 1. during the preceding water
113 management district fiscal year for wetland mitigation purposes.
114 The report shall exclude those contributions pursuant to s.
115 373.4137. The report shall include a description of the endorsed

116 mitigation projects and, except for projects governed by s.
117 373.4135(6), shall address, as applicable, success criteria,
118 project implementation status and timeframe, monitoring, long-
119 term management, provisions for preservation, and full cost
120 accounting.
121 3. If the applicant is unable to meet water quality
122 standards because existing ambient water quality does not meet
123 standards, the governing board or the department shall consider
124 mitigation measures proposed by or acceptable to the applicant
125 that cause net improvement of the water quality in the receiving
126 body of water for those parameters which do not meet standards.
127 4. If mitigation requirements imposed by a local government
128 for surface water and wetland impacts of an activity regulated
129 under this part cannot be reconciled with mitigation requirements
130 approved under a permit for the same activity issued under this
131 part, including application of the uniform wetland mitigation
132 assessment method adopted pursuant to subsection (18), the
133 mitigation requirements for surface water and wetland impacts
134 shall be controlled by the permit issued under this part.
135 Section 2. Section 373.4145, Florida Statutes, is reenacted
136 and amended to read:
137 373.4145 ~~Interim~~ Part IV permitting program <u>within the</u>
138 <u>geographical jurisdiction of</u> ~~for~~ the Northwest Florida Water
139 Management District.--
140 (1) Within the geographical jurisdiction of the Northwest
141 Florida Water Management District, <u>taking into consideration the</u>
142 <u>differing physical and natural characteristics of the area, the</u>
143 <u>department and the district shall</u> ~~the permitting authority of the~~

144 ~~department under this part shall consist solely of the following,~~
145 ~~notwithstanding the rule adoption deadline in s. 373.414(9)~~:
146 (a) Jointly develop rules to regulate the construction,
147 operation, alteration, maintenance, abandonment, and removal of
148 stormwater management systems. The department shall adopt the
149 rules no later than January 1, 2007; the district may implement
150 rules prior to adoption pursuant to s. 120.54. Until the
151 stormwater management system rules take effect, chapter 62-25 ~~17-~~
152 ~~25~~, Florida Administrative Code, shall remain in full force and
153 effect~~,~~ and shall be implemented by the department.
154 Notwithstanding the provisions of this section, chapter 62-25 ~~17-~~
155 ~~25~~, Florida Administrative Code, may be amended by the department
156 as necessary to comply with any requirements of state or federal
157 laws or regulations, or any condition imposed by a federal
158 program, or as a requirement for receipt of federal grant funds.
159 The intent of these rules is to update the stormwater rules to
160 improve water quality and water quality protection. This
161 objective should be accomplished by generally applying the least
162 restrictive measures and criteria adopted by the other water
163 management district rules.
164 (b) Jointly develop rules for the management and storage of
165 surface waters under this part. The department shall adopt the
166 rules no later than July 1, 2008; the district may implement
167 rules prior to adoption pursuant to s. 120.54. Until the rules
168 for the management and storage of surface waters under this part
169 take effect, rules adopted pursuant to the authority of ss.
170 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as
171 amended, in effect prior to July 1, 1994, shall remain in full
172 force and effect, and shall be implemented by the department.

173 However, the department is authorized to establish additional
174 exemptions and general permits for dredging and filling, if such
175 exemptions or general permits do not allow significant adverse
176 impacts to occur individually or cumulatively. However, for the
177 purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code,
178 the landward extent of surface waters of the state identified in
179 rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code,
180 shall be determined in accordance with the methodology in rules
181 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,
182 Florida Administrative Code~~, as ratified in s. 373.4211, upon the~~
183 ~~effective date of such ratified methodology~~. In implementing s.
184 373.421(2), the department shall determine the extent of those
185 surface waters and wetlands within the regulatory authority of
186 the department as described in this paragraph. At the request of
187 the petitioner, the department shall also determine the extent of
188 surface waters and wetlands that ~~which~~ can be delineated by the
189 methodology ratified in s. 373.4211, but that ~~which~~ are not
190 subject to the regulatory authority of the department as
191 described in this paragraph. The intent of these rules is to
192 minimally encroach upon property interests while improving the
193 management and storage of surface waters. The scope of these
194 regulations must recognize the historically rural nature of the
195 district and the permitting thresholds and requirements must
196 reflect this distinction.
197 (c) Pursue streamlining of the federal and state wetland
198 permitting programs pursuant to ss. 373.4143 and 373.4144.
199 (d) Implement, to the maximum extent possible, streamlining
200 measures, including electronic permitting, field permitting, and
201 certification programs for activities with minimal individual or

202 cumulative impact, informal wetland determinations, and other
203 similar measures.
204 (2) ~~(c)~~ The department may implement chapter 40A-4, Florida
205 Administrative Code, in effect prior to July 1, 1994, pursuant to
206 an interagency agreement with the Northwest Florida Water
207 Management District adopted under s. 373.046(4).
208 (3) The rules adopted under subsection (1), as applicable,
209 shall:
210 (a) Incorporate the exemptions in ss. 373.406 and
211 403.813(2).
212 (b) Incorporate the provisions of rule 62-341.475(1)(f),
213 Florida Administrative Code, applicable to single-family homes
214 located entirely or partially within wholly owned, isolated
215 wetlands.
216 (c) Exempt from the notice and permitting requirements of
217 this part the construction or private use of a single-family
218 dwelling unit, duplex, triplex, or quadruplex that:
219 1. Is not part of a larger common plan of development or
220 sale proposed by the applicant.
221 2. Does not involve wetlands or other surface waters.
222 (d) At a minimum, the rules adopted shall include the
223 exemptions and general permits which have been enacted by rule in
224 accordance with s. 373.414(9), Florida Statutes, by the
225 Department and other water management districts and general
226 permits authorized by s. 403.814, Florida Statutes. In the event
227 an activity or structure is exempt from permitting in any
228 district and permitted in others, it shall be exempt in the
229 Northwest Florida Water Management District. These rules shall
230 exempt resurfacing or paving of unpaved roads and an alteration

231 of wholly-owned artificially created surface waters which do not
232 connect to waters of the state.
233 ~~(2) The authority of the Northwest Florida Water Management~~
234 ~~District to implement this part or to implement any authority~~
235 ~~pursuant to delegation by the department shall not be affected by~~
236 ~~this section. The rule adoption deadline in s. 373.414(9) shall~~
237 ~~not apply to said district.~~
238 (4) ~~(3)~~ The department and the ~~division of permitting~~
239 ~~responsibilities in s. 373.046(4) shall not apply within the~~
240 ~~geographical jurisdiction of the~~ Northwest Florida Water
241 Management District shall enter into an operating agreement under
242 s. 373.046 to effectively implement this section and provide the
243 district with the amount of responsibility under the agreement
244 that resources allow, including, at a minimum, the responsibility
245 for regulating silviculture and agriculture. The operating
246 agreement shall encourage local delegation of the
247 responsibilities under this section pursuant to s. 373.441.
248 (5) The provisions of s. 373.414(11)-(14) shall not apply
249 to rules adopted under this section.
250 (6) The following activities shall continue to be governed
251 by the provisions of s. 373.4145, Florida Statutes 1994:
252 (a) The operation and routine custodial maintenance of
253 activities legally in existence before the effective date of the
254 rules adopted under subsection (1), as long as the terms and
255 conditions of the permit, exemption, or other authorization for
256 such activities continue to be met.
257 (b) The activities approved in a permit issued pursuant to
258 s. 373.4145, Florida Statutes 1994, and the review of activities
259 proposed in applications received before the effective date of

260 the rules adopted under subsection (1), as applicable. This
261 paragraph shall also apply to any modification of the plans,
262 terms, and conditions of a permit issued pursuant to s. 373.4145,
263 Florida Statutes 1994, that lessens the environmental impact,
264 except any such modification shall not extend the time limit for
265 construction beyond 2 additional years.
266
267 This subsection shall not apply to any activity that is altered,
268 modified, expanded, abandoned, or removed after adoption of the
269 applicable rules under subsection (1).
270 (7) Unless the petitioner elects to apply rule 62-340,
271 Florida Administrative Code, to all wetlands, the delineation of
272 the landward extent of wetlands and other surface waters for
273 petitions filed under s. 373.421(2) prior to the effective date
274 of the rules adopted under paragraph (1)(b) shall continue to be
275 determined in accordance with rules 62-312.030(2), Florida
276 Administrative Code, in effect July 1, 1994, and rules 62-340.100
277 through 62-340.600, Florida Administrative Code, as ratified in
278 s. 373.4211.
279 ~~(4) If the United States Environmental Protection Agency~~
280 ~~approves an assumption of the federal program to regulate the~~
281 ~~discharge of dredged or fill material by the department or the~~
282 ~~water management districts, or both, pursuant to s. 404 of the~~
283 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
284 ~~1251 et seq.; the United States Army Corps of Engineers issues~~
285 ~~one or more state programmatic general permits under the~~
286 ~~referenced statutes; or the United States Environmental~~
287 ~~Protection Agency or the United States Corps of Engineers~~
288 ~~approves any other delegation of regulatory authority under the~~

289 ~~referenced statutes, then the department may implement any~~
290 ~~permitting authority granted in this part within the Northwest~~
291 ~~Florida Water Management District which is prescribed as a~~
292 ~~condition of granting such assumption, general permit, or~~
293 ~~delegation.~~
294 (8) ~~(5)~~ Within the geographical jurisdiction of the
295 Northwest Florida Water Management District, the methodology for
296 determining the landward extent of surface waters of the state
297 under chapter 403 in effect prior to the effective date of the
298 methodology ratified in s. 373.4211 shall apply to:
299 (a) Activities permitted under the rules adopted pursuant
300 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
301 1983, as amended, or that ~~which~~ were exempted from regulation
302 under such rules, prior to July 1, 1994, and that ~~which~~ were
303 permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code,
304 or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code,
305 prior to July 1, 1994, provided:
306 1. An activity authorized by such permits is conducted in
307 accordance with the plans, terms, and conditions of such permits.
308 2. An activity exempted from the permitting requirements of
309 the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement
310 to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~,
311 Florida Administrative Code, is:
312 a. Commenced prior to July 1, 1994, and completed by July
313 1, 1999;
314 b. Conducted in accordance with a plan depicting the
315 activity that ~~which~~ has been submitted to and approved for
316 construction by the department, the appropriate local government,

317 the United States Army Corps of Engineers, or the Northwest
318 Florida Water Management District; and
319 c. Conducted in accordance with the terms of the exemption.
320 (b) An activity within the boundaries of a valid
321 jurisdictional declaratory statement issued pursuant to s.
322 403.914, 1984 Supplement to the Florida Statutes 1983, as
323 amended, or the rules adopted thereunder, in response to a
324 petition received prior to June 1, 1994.
325 (c) Any modification of a permitted or exempt activity as
326 described in paragraph (a) that ~~which~~ does not constitute a
327 substantial modification or that ~~which~~ lessens the environmental
328 impact of such permitted or exempt activity. For the purposes of
329 this section, a substantial modification is one that ~~which~~ is
330 reasonably expected to lead to substantially different
331 environmental impacts.
332 (d) Applications for activities permitted under the rules
333 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
334 1983 Florida Statutes, as amended, that ~~which~~ were pending on
335 June 15, 1994, unless the application elects to have applied the
336 delineation methodology ratified in s. 373.4211.
337 (9) Subsections (2) and (8) are repealed on the effective
338 date of the rules adopted pursuant to subsection (1).
339 (10) In the event that the Legislature in any given fiscal
340 year fails to fund and staff the environmental resource
341 permitting program established under this section, the
342 environmental resource permitting program shall be suspended for
343 that fiscal year and the rules and statutes governing development
344 activity in the district shall revert to those in effect on April

345 1, 2006 until such time as funding and staffing levels are
346 restored consistent with this section.
347 ~~(6) Subsections (1), (2), (3), and (4) shall be repealed~~
348 ~~effective July 1, 2006.~~
349 Section 3. The sum of $2,740,000 is appropriated from the
350 Water Management Lands Trust Fund to the Department of
351 Environmental Protection for the 2006-07 fiscal year for the
352 operational expenditures of the Northwest Florida Water
353 Management District pursuant to s. 373.4145, F.S., as amended by
354 this act.
355 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
356 and section 32 of chapter 2005-71, Laws of Florida, are repealed.
357 Section 5. This act shall take effect July 1, 2006.

Committee on Environmental Regulation

Wednesday, March 22, 2006
1:00 – 4:00 PM
212 Knott

Addendum A (03.22.06, 12:00 p.m.)

Allan G. Bense
Speaker

Mitch Needelman
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **PCB ENVR 06-06**

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 Representative(s) Kendrick offered the following:
3
4 **Amendment**
5 Remove line 433 and insert:
6 206.606 and 376.15, F.S. Where federal disaster funds are
7 available, the Fish and Wildlife Conservation Commission is
8 directed to implement a plan to seek federal disaster funds and
9 to use these funds to remove derelict vessels.
10

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **PCB ENVR 06-06**

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 Representative(s) Kendrick offered the following:
3
4 **Amendment**
5 Remove line 136 and insert:
6 employee, or agent may remove the vessel, if reasonable, from
7 its

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