Agriculture and Environment Appropriations Committee

Tuesday, April 11, 2006

9:30 pm

306 House Office Building

Allan Bense
Speaker

Stan Mayfield
Chair

Florida House of Representatives

Fiscal Council
Agriculture & Environment Appropriations Committee

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Agenda for
Date: April 11, 2006
Location: 306 House Office Building, Tallahassee, FL
Time: 9:30 AM

I. Call to Order

II. Roll Call

III. HB 749 CS by Bowen—Sewage Treatment and Disposal Systems

IV. HB 1023 CS by Planas—Playgrounds

V. HB 1063 CS by Stansel—Regulation of Wells

VI. HB 1345 by Littlefield—Saltwater Fisheries

VII. HB 1533 by Sands—Petroleum Contamination

VIII. HB 7133 by Environmental Regulation Committee—Environmental Protection

IX. HB 7159 by Agriculture Committee—Citrus Disease Management

X. HB 7163 by Environmental Regulation Committee—Environmental Permitting

XI. Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6204

HB 749 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

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

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

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

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

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

Growth and Concurrency Obligations

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

Central Wastewater Collection and Treatment[7]

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

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

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

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

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

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

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

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

Preliminary Treatment

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

Secondary Treatment

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

On-site Systems

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

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

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

[8] http://cfpub2.epa.gov/owm/septic/home.cfm - Frequently Asked Questions

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

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

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

TMDL Program

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

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

In the 2005 Regular Session, the TMDL program was amended to authorize DEP to develop basin management action plans (BMAP) as part of the development and implementation of a TMDL for a water body. The law requires plans to integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL, restore designated uses of the water body, provide for phased implementation of strategies, establish a schedule for implementing strategies, establish a basis for evaluating the plan's effectiveness, identify feasible funding strategies, and equitably allocate pollutant reductions to basins as a whole or to each point or

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

non-point source. The bill provides that plans may provide pollutant load reduction credits to pollution dischargers that have implemented strategies to reduce pollutant loads.[13]

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

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

Effect of Proposed Changes

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

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

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

The bill authorizes a local government to grant a variance to an owner of a performance-based onsite sewage treatment and disposal system permitted by the DOH as long as the onsite system is functioning properly and satisfying the conditions of the operating permit; however, the bill explicitly provides that a local government is not required to issue a variance under any circumstance. The bill also clarifies that a local government located within an area of critical state concern or located in an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation is not required to issue a variance under any circumstance, and nothing in this provision should be construed as limiting local government authority to enact ordinances under s. 4 of ch. 99-395, L.O.F.

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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

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

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

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

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

The amendment limits the "opt out" provision to an owner of a performance-based onsite sewage treatment and disposal system that is permitted by the department and which provides for treatment meeting advanced secondary treatment standards. Such an owner shall not be required to connect to a publicly owned or investor-owned sewerage system as long as the onsite system is functioning properly and satisfying the conditions of the operating permit.

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

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

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

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to sewage treatment and disposal systems;
7 amending s. 153.54, F.S.; requiring county commissions to
8 include certain studies for the construction of a new
9 proposed sewerage system or the extension of an existing
10 sewerage system in certain reports; amending s. 153.73,
11 F.S.; requiring county water and sewer districts to
12 conduct certain studies for the construction of a new
13 proposed sewerage system or the extension of an existing
14 sewerage system prior to the levying of certain
15 assessments; amending s. 163.3180, F.S.; authorizing local
16 governments to use certain onsite sewage treatment and
17 disposal systems to meet certain concurrency requirements;
18 amending s. 180.03, F.S.; requiring municipalities to
19 conduct certain studies for the construction of a new
20 proposed sewerage system or the extension of an existing
21 sewerage system prior to the adoption of certain
22 resolutions or ordinances; amending s. 381.00655, F.S.;
23 authorizing local governments to grant variances from

24 connecting to a publicly owned or investor-owned sewerage
25 system under certain circumstances; providing
26 construction; providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Subsection (5) is added to section 153.54,
31 Florida Statutes, to read:
32 153.54 Preliminary report by county commissioners with
33 respect to creation of proposed district.--Upon receipt of a
34 petition duly signed by not less than 25 qualified electors who
35 are also freeholders residing within an area proposed to be
36 incorporated into a water and sewer district pursuant to this
37 law and describing in general terms the proposed boundaries of
38 such proposed district, the board of county commissioners if it
39 shall deem it necessary and advisable to create and establish
40 such proposed district for the purpose of constructing,
41 establishing or acquiring a water system or a sewer system or
42 both in and for such district (herein called "improvements"),
43 shall first cause a preliminary report to be made which such
44 report together with any other relevant or pertinent matters,
45 shall include at least the following:
46 (5) For the construction of a new proposed sewerage system
47 or the extension of an existing sewerage system that was not
48 previously approved, the report shall include a study that
49 includes the available information from the Department of Health
50 on the history of onsite sewage treatment and disposal systems
51 currently in use in the area and a comparison of the projected

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

80 and using the proposed sewerage system versus installing,
81 operating, and properly maintaining an onsite sewage treatment
82 system that is approved by the Department of Health and that
83 provides for the comparable level of environmental and health
84 protection as the proposed central sewerage system and other
85 factors deemed relevant by the local authority.
86 Section 3. Paragraph (a) of subsection (2) of section
87 163.3180, Florida Statutes, is amended to read:
88 163.3180 Concurrency.--
89 (2)(a) Consistent with public health and safety, sanitary
90 sewer, solid waste, drainage, adequate water supplies, and
91 potable water facilities shall be in place and available to
92 serve new development no later than the issuance by the local
93 government of a certificate of occupancy or its functional
94 equivalent. Prior to approval of a building permit or its
95 functional equivalent, the local government shall consult with
96 the applicable water supplier to determine whether adequate
97 water supplies to serve the new development will be available no
98 later than the anticipated date of issuance by the local
99 government of a certificate of occupancy or its functional
100 equivalent. A local government may meet the concurrency
101 requirement for sanitary sewer through the use of onsite sewage
102 treatment and disposal systems approved by the Department of
103 Health to serve new development.
104 Section 4. Subsection (3) is added to section 180.03,
105 Florida Statutes, to read:
106 180.03 Resolution or ordinance proposing construction or
107 extension of utility; objections to same.--

108 (3) For the construction of a new proposed sewerage system
109 or the extension of an existing sewerage system that was not
110 previously approved, the report shall include a study that
111 includes the available information from the Department of Health
112 on the history of onsite sewage treatment and disposal systems
113 currently in use in the area and a comparison of the projected
114 costs to the owner of a typical lot or parcel of connecting to
115 and using the proposed sewerage system versus installing,
116 operating, and properly maintaining an onsite sewage treatment
117 system that is approved by the Department of Health and that
118 provides for the comparable level of environmental and health
119 protection as the proposed central sewerage system and other
120 factors deemed relevant by the local authority. The results of
121 such a study shall be included in the resolution or ordinance
122 required under subsection (1).
123 Section 5. Paragraph (c) is added to subsection (2) of
124 section 381.00655, Florida Statutes, to read:
125 381.00655 Connection of existing onsite sewage treatment
126 and disposal systems to central sewerage system; requirements.--
127 (2) The provisions of subsection (1) or any other
128 provision of law to the contrary notwithstanding:
129 (c) A local government may grant a variance to an owner of
130 a performance-based onsite sewage treatment and disposal system
131 permitted by the department as long as the onsite system is
132 functioning properly and satisfying the conditions of the
133 operating permit. Nothing in this paragraph shall be construed
134 to require a local government to issue a variance under any
135 circumstance. A local government located within an area of

136 critical state concern or located in an area that was designated
137 as an area of critical state concern for at least 20 consecutive
138 years prior to removal of the designation shall not be required
139 to issue a variance under any circumstance, and nothing in this
140 paragraph shall be construed as limiting local government
141 authority to enact ordinances under s. 4 of chapter 99-395, Laws
142 of Florida.
143 Section 6. This act shall take effect July 1, 2006.

Amendment No. (for drafter's use only)

Bill No. **HB 749 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Agriculture & Environment
2 Appropriations
3 Representative Bowen offered the following:
4
5 **Amendment (with title amendment)**
6 Remove line 143 and insert:
7 Section 6. Section 318.0067, Florida Statutes, is amended
8 to read:
9 381.0067 Corrective orders; private and certain public
10 water systems and onsite sewage treatment and disposal systems.-
11 - When the department or its agents, through investigation, find
12 that any private water system, public water system not covered
13 or included in the Florida Safe Drinking Water Act (part VI of
14 chapter 403) or onsite sewage treatment and disposal system
15 constitutes a nuisance or menace to the public health, the
16 department or its agents ~~it~~ may issue an order requiring the
17 owner to correct the improper condition. If the improper
18 condition relates to the drainage field of an onsite sewage
19 treatment and disposal system, the department or its agents may
20 issue an order requiring the owner to repair or replace the
21 drainage field. If an onsite sewage treatment and disposal

22 system has failed, the department or its agents shall issue an
23 order requiring the owner to replace the system. For purposes of
24 this section, an onsite sewage treatment and disposal system has
25 failed if the operation of the system constitutes a nuisance or
26 menace to the public health and the system cannot be repaired.
27 Section 7. Subsection (2) of section 489.554, Florida
28 Statutes, is amended to read:
29 489.554 Registration renewal.--
30 (2) At a minimum, annual renewal shall include continuing
31 education requirements of not less than 12 ~~6~~ classroom hours
32 annually for septic tank contractors and not less than 18 ~~12~~
33 classroom hours annually for master septic tank contractors. The
34 18 ~~12~~ classroom hours of continuing education required for
35 master septic tank contractors may include the 12 ~~6~~ classroom
36 hours required for septic tank contractors, but at a minimum
37 must include 6 classroom hours of approved master septic tank
38 contractor coursework.
39 Section 8. This act shall take effect July 1, 2006.
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41
42 ========== T I T L E A M E N D M E N T ==========
43 Remove line 26 and insert:
44 construction; amending s. 381.0067, F.S.; authorizing the
45 department or it agents to require repair or replacement of
46 existing sewage treatment and disposal system under certain
47 circumstances; requiring the department or its agents to issue
48 an order requiring an owner to repair or replace an onsite
49 sewage treatment and disposal system under certain
50 circumstances; providing construction; amending s. 489.554,
51 F.S.; increasing annual continuing education requirements for

52 septic tank contractors and master septic tank contractors;
53 providing an effective date.
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1023 CS Playgrounds
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 1892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) Governmental Operations Committee			
4) Fiscal Council			
5)			

SUMMARY ANALYSIS

The Florida Recreation Development Assistance Program (FRDAP) is established by the Department of Environmental Protection (DEP) and funded by a portion of the funds credited to the Land Acquisition Trust Fund and Florida Forever Trust Fund. FRDAP provides grants to qualified local government entities to acquire or develop land for public outdoor recreation.

This bill requires DEP to adopt a rule creating an incentive for the construction of inclusive playgrounds.

This bill would take effect July 1, 2006.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- This bill assigns an additional responsibility to the Department of Environmental Protection (DEP) by requiring DEP to adopt a rule to incentives the construction of inclusive playgrounds.

B. EFFECT OF PROPOSED CHANGES:

Florida Recreation Development Assistance Program (FRDAP)

The Florida Recreation Development Assistance Program (FRDAP) provides grants to qualified local government entities so they may acquire or develop land for public outdoor recreation purposes.[1] Funding for the program is based upon not less than 5% of the money credited to the Land Acquisition Trust Fund and from the Florid Forever Trust Fund as determined in s. 259.105(d), F.S., which is currently 2%. Because it is based on percentages, FRDAP's budget varies each year.

In distributing funds, the Department of Environmental Protection (DEP) has adopted rules and procedures within a competitive selection process to maximize the benefits to the public.[2] In the Florida Administrative Code, DEP has developed a point score ranking system. The system allows eligible projects to earn points for meeting various criteria within general criteria, developmental criteria, acquisition criteria, and trail consideration criteria.[3] Many of the criteria are based on meeting the outdoor recreation goals, objectives, and priorities in the Statewide Comprehensive Outdoor Recreation Plan (SCORP).[4]

FRDAP grants are only awarded to projects with the sole purpose of providing outdoor recreational opportunities to the public. To be eligible, the site of the project must be either owned by the applicant or leased to them for a sufficient period of time to satisfy the dedication period. DEP has the ability to make exceptions for what is considered an eligible site. In addition, DEP must also consider the project to be viable and practical. A project that does not receive at least 53 points in the ranking system is considered to be nonviable.[5] After points are awarded, the projects that received at least 53 points are then ranked and listed on a priority list, with funds going to the projects with the highest points first. The minimum point requirement is to help in securing larger, more inclusive projects. Under this system, it is hard, if not impossible, for stand alone projects to qualify for funding.[6]

FRDAP funds are distributed as reimbursements with match requirements.[7] There is a maximum grant limit of $200,000 for each project. No local government may apply for more than two grants each application period, nor may a local government have more than three active projects receiving grant funds per fiscal year.[8] In three of the last five years (not including 2006), all projects on the priority list

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[1] Section 375.075(1), F.S.
[2] Section 375.075(2), F.S.
[3] Fla, Admin, Code R. 62D-5.
[4] The purpose of SCORP is to provide a guide for the "development of a diverse, balanced, statewide outdoor recreation system toward meeting current and future needs." It is intended to be comprehensive in both planning and implementation. www.dep.state.fl.up/parks/planning/defualt.htm
[5] Fla. Admin. Code R. 62D-5.056.
[6] E-mail from Bruce Deterding of DEP, March 6, 2006.
[7] Fla. Admin. Code R. 62D-5.055.
[8] Section 375.075(3), F.S.

have received funding. There have been instances when a project has not made the list but was funded by the Legislature in a separate line item appropriation.[9]

Effect of Bill

The bill provides for DEP to adopt a rule under FRDAP, creating an incentive for the construction of inclusive playground projects. The bill defines an inclusive playground as:

> A playground with a barrier-free environment designed for children of all abilities, including those with physical, developmental, cognitive, and sensory disabilities, to experience independent self-directed play, each at his or her own highest level of ability, and includes accessible play components and equipment that engage and provide access for children with various motor impairments.

Projects being defined as inclusive playgrounds by this bill are technically eligible to be funded under the current FRDAP program. However, under the current FRDAP program, these projects are subjected to the minimum 53 point requirements and the same competitive ranking system as all other qualifying projects. Because of the high costs associated with inclusive playgrounds, especially as stand alone projects, it is difficult for them to receive the 53 point minimum. For inclusive playgrounds to be funded under the current FRDAP, they normally must be part of a larger project.[10]

C. SECTION DIRECTORY:

Section 1: Amends directory language of s. 375.075, F.S., to include inclusive playgrounds and creates subsection (4) to provide for a inclusive playground incentive.

Section 2: 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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[9] E-mail from Bruce Deterding of DEP, March 6, 2006.
[10] E-mail from Bruce Deterding of DEP, March 6, 2006.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill directs DEP to adopt, by rule, an incentive program for inclusive playgrounds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The current statute contains an incorrect cross reference to s. 259.105(3)(c). The correct cross reference should be s. 259.105(3)(d). This is being corrected in a revisers bill, HB 7067(42).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one amendment on March 22, 2006. The amendment changes the term "boundless" to "inclusive" and provides that DEP adopt a rule creating an incentive to construct inclusive playgrounds. The bill, as amended, was reported favorably with committee substitute.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to playgrounds; amending s. 375.075, F.S.; requiring the Department of Environmental Protection to adopt by rule a determination of the appropriate incentive for encouraging the construction of inclusive playgrounds; defining the term "inclusive playground"; providing an effective date.

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

Section 1. Section 375.075, Florida Statutes, is amended to read:

375.075 Outdoor recreation; financial assistance to local governments; inclusive playgrounds.--

(1) The Department of Environmental Protection is authorized to establish the Florida Recreation Development Assistance Program to provide grants to qualified local governmental entities to acquire or develop land for public outdoor recreation purposes. To the extent not needed for debt

24 service on bonds issued pursuant to s. 375.051, each year the
25 department shall develop and plan a program which shall be based
26 upon funding of not less than 5 percent of the money credited to
27 the Land Acquisition Trust Fund pursuant to s. 201.15(2) and (3)
28 in that year. Beginning fiscal year 2001-2002, the department
29 shall develop and plan a program which shall be based upon the
30 cumulative total funding provided from this section and from the
31 Florida Forever Trust Fund pursuant to s. 259.105(3)(c).
32 (2)(a) The department shall adopt, by rule, procedures to
33 govern the program, which shall include, but need not be limited
34 to, a competitive project selection process designed to maximize
35 the outdoor recreation benefit to the public.
36 (b) Selection criteria shall, at a minimum, rank:
37 1. The extent to which the project would implement the
38 outdoor recreation goals, objectives, and priorities specified
39 in the state comprehensive outdoor recreation plan; and
40 2. The extent to which the project would provide for
41 priority resource or facility needs in the region as specified
42 in the state comprehensive outdoor recreation plan.
43 (c) No release of funds from the Land Acquisition Trust
44 Fund, or from the Florida Forever Trust Fund beginning in fiscal
45 year 2001-2002, for this program may be made for these public
46 recreation projects until the projects have been selected
47 through the competitive selection process provided for in this
48 section.
49 (3) A local government may submit up to two grant
50 applications during each application period announced by the
51 department. However, a local government may not have more than

52 three active projects expending grant funds during any state
53 fiscal year. The maximum project grant for each project
54 application may not exceed $200,000 in state funds.
55 (4) The department shall adopt by rule a determination of
56 the appropriate incentive for encouraging the construction of
57 inclusive playgrounds. The term "inclusive playground" means a
58 playground with a barrier-free environment designed for children
59 of all abilities, including those with physical, developmental,
60 cognitive, and sensory disabilities, to experience independent
61 self-directed play, each at his or her own highest level of
62 ability, and includes accessible play components and equipment
63 that engage and provide access for children with various motor
64 impairments.
65 Section 2. This act shall take effect July 1, 2006.

Bill No. **1023 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Planas offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove line(s) 17 through 54 and insert:
7
8 375.075 Outdoor recreation; financial assistance to local
9 governments.--
10 (1) The Department of Environmental Protection is
11 authorized to establish the Florida Recreation Development
12 Assistance Program to provide grants to qualified local
13 governmental entities to acquire or develop land for public
14 outdoor recreation purposes. To the extent not needed for debt
15 service on bonds issued pursuant to s. 375.051, each year the
16 department shall develop and plan a program which shall be based
17 upon funding of not less than 5 percent of the money credited to
18 the Land Acquisition Trust Fund pursuant to s. 201.15(2) and (3)
19 in that year. Beginning fiscal year 2001-2002, the department
20 shall develop and plan a program which shall be based upon the

21 cumulative total funding provided from this section and from the
22 Florida Forever Trust Fund pursuant to s. 259.105(3)(c).
23 (2)(a) The department shall adopt, by rule, procedures to
24 govern this~~the~~ program. ~~, which~~ This rule shall include: ~~, but~~
25 ~~need not be limited to,~~ a competitive project selection process
26 designed to maximize the outdoor recreation benefit to the
27 public; the total number of active projects expending grant
28 funds a local government may have during any state fiscal year;
29 the maximum amount of state funds that is awardable for each
30 grant project; application requirements; required documentation
31 and forms; grant administration; accountability; site dedication
32 and management; conversions; public accessibility; entrance
33 fees; native plantings; inspections; and compliance.
34 (b) Selection criteria shall, at a minimum, rank:
35 1. The extent to which the project would implement the
36 outdoor recreation goals, objectives, and priorities specified
37 in the state comprehensive outdoor recreation plan; and
38 2. The extent to which the project would provide for
39 priority resource or facility needs in the region as specified
40 in the state comprehensive outdoor recreation plan.
41 (c) No release of funds from the Land Acquisition Trust
42 Fund, or from the Florida Forever Trust Fund beginning in fiscal
43 year 2001-2002, for this program may be made for these public
44 recreation projects until the projects have been selected
45 through the competitive selection process provided for in this
46 section.
47 ~~(3) A local government may submit up to two grant~~
48 ~~applications during each application period announced by the~~
49 ~~department. However, a local government may not have more than~~
50 ~~three active projects expending grant funds during any state~~

51 ~~fiscal year. The maximum project grant for each project~~
52 ~~application may not exceed $200,000 in state funds.~~
53
54 ========== D I R E C T O R Y A M E N D M E N T ==========
55 Remove line(s) and insert:
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57
58 ========== T I T L E A M E N D M E N T ==========
59 Remove line(s) and insert:
60

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Law

Water Well Contractor License

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

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

Renewals

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

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

for more than one year can be reactivated only by applying for licensure under the provisions of s. 373.323, F.S.

Penalties

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

Effect of Proposed Changes

Water Well Contractor

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

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

License Renewal

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

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

This committee substitute amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived if the contractor obtained his first license within 180 days before the end of the biennial licensing cycle.

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

This provision appears to allow for an extension under any situation in which a servicemember or a servicemember and his or her spouse find themselves unable to renew their water well contractor license in a timely manner if the servicemember is on military orders. In other words, the extension may be granted if the servicemember is temporarily deployed on military orders or if the servicemember is permanently moved to a new duty station on military orders. This provision also stipulates that in

order for a licensee to be granted a waiver under this subsection, the servicemember must provide military orders or a letter from his or her commander as proof of eligibility.

Penalties

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

C. SECTION DIRECTORY:

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

Section 2. Amends s. 373.324, F.S., to address provisions relating to renewal of licenses for water well contractors.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

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

The committee then reported the bill favorably by a vote of 7 to 0.

CHAMBER ACTION

1 The Military & Veteran Affairs Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to regulation of wells; amending s.
8 373.323, F.S.; authorizing licensed water well contractors
9 to facilitate work by certain licensed contractors under
10 certain circumstances; providing a definition; amending s.
11 373.324, F.S.; requiring the Department of Environmental
12 Protection to include the renewal fee in its license-
13 renewal method prescribed by rule; waiving continuing
14 education requirements for license renewal of certain
15 water well contractors; providing water well contractor
16 license extensions for certain servicemembers and their
17 spouses under certain circumstances; providing for
18 exemption from certain costs or fees under certain
19 circumstances; providing for nullification of extension
20 under certain circumstances; amending s. 373.333, F.S.;
21 increasing the amount of the administrative fine a water
22 management district may impose for certain water well
23 contracting violations; amending s. 373.336, F.S.;

24 providing fines for persons or entities drilling a water
25 well without a license or contracting with unlicensed
26 water well contractors for water well services; requiring
27 the department to establish policies and procedures for
28 the enforcement of the fines; providing an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsection (11) is added to section 373.323,
33 Florida Statutes, to read:
34 373.323 Licensure of water well contractors; application,
35 qualifications, and examinations; equipment identification.--
36 (11) A licensed water well contractor may facilitate the
37 performance of additional work by an appropriately licensed
38 contractor that is incidental to the construction, repair, or
39 abandonment of a water well. For purposes of this subsection,
40 "incidental" work is limited to the electrical connection of a
41 pump, connecting a well to a residential dwelling, constructing
42 a pump house or pump vault of 100 square feet or less,
43 constructing a nonstructural well slab of 100 square feet or
44 less, fencing, and landscaping. Nothing in this part shall
45 authorize a licensed water well contractor to perform any
46 services or work for which a license under chapter 489 is
47 required.
48 Section 2. Subsection (3) of section 373.324, Florida
49 Statutes, is amended, and subsection (7) is added to that
50 section, to read:
51 373.324 License renewal.--

52 (3) The department shall prescribe by rule the method for
53 renewal of a license, which shall include continuing education
54 requirements of not less than 12 classroom hours for each
55 renewal cycle as well as a renewal fee. However, if a water well
56 contractor has received his or her first license within 180 days
57 before the end of the license biennium, the continuing education
58 requirements shall be waived for the licensee's first renewal
59 cycle.
60 (7) Notwithstanding the renewal requirements of subsection
61 (3) and the provision under s. 250.4815, any active water well
62 contractor license issued under this part to a servicemember as
63 defined in s. 250.01 or his or her spouse, both of whom reside
64 in the state, shall not become inactive while the servicemember
65 is serving on military orders that take him or her over 35 miles
66 from his or her residence, and the license shall be considered
67 an active license for up to 180 days after the servicemember
68 returns to his or her residence in the state. If the license
69 renewal requirements are met within the 180-day extension
70 period, the servicemember or his or her spouse shall not be
71 charged any additional costs above the normal license fees,
72 including, but not limited to, late fees or delinquency fees.
73 Nothing in this subsection shall be construed to waive renewal
74 requirements such as applying, continuing education, and all
75 associated fees. The servicemember must present to the water
76 management district issuing the license a copy of his or her
77 official military orders or a written verification from the
78 servicemember's commanding officer before the end of the 180-day
79 period in order to qualify for the extension. The extension

80 granted in this subsection shall be nullified in the event the
81 licensee engages in for-profit water well contracting in the
82 private sector during the 180-day extension period, prior to
83 completing all renewal requirements.
84 Section 3. Paragraph (c) of subsection (5) of section
85 373.333, Florida Statutes, is amended to read:
86 373.333 Disciplinary guidelines; adoption and enforcement;
87 license suspension or revocation.--
88 (5) When the water management district finds a person
89 guilty of any of the grounds set forth in subsection (4), it may
90 enter an order imposing one or more of the following
91 disciplinary actions:
92 (c) Imposition of an administrative fine not to exceed
93 $5,000 ~~$1,000~~ for each count or separate offense.
94 Section 4. Subsection (4) is added to section 373.336,
95 Florida Statutes, to read:
96 373.336 Unlawful acts; penalties.--
97 (4) Persons or entities drilling a water well without a
98 license or contracting with an unlicensed water well contractor
99 for water well services shall be subject to a fine of up to
100 $5,000 for each violation. Policies and procedures for the
101 enforcement of the fines shall be established by the department.
102 Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **1063 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Agriculture & Environment
2 Appropriations
3 Representative(s) Stansel offered the following:
4
5 **Amendment (with title amendment)**
6 Remove line 55 and insert:
7 renewal cycle. In addition to the fees provided in s. 373.329,
8 the department by rule shall establish a fee not to exceed $20
9 per credit hour to be paid by the licensee for the cost of
10 implementing the continuing education requirements of this
11 subsection. The fee shall be based on the actual costs incurred
12 in administering the responsibilities related to the continuing
13 education requirements. The department may delegate to the water
14 management districts, or the department or a water management
15 district may contract with a private entity to carry out, the
16 responsibilities related to the continuing education
17 requirements. However, if a water well
18
19 ========== T I T L E A M E N D M E N T ==========
20 Remove line 15 and insert:

21 water well contractors; requiring the department to establish by
22 rule a fee to cover the cost of implementing the continuing
23 education requirements; providing a maximum fee amount;
24 authorizing the department to delegate certain authority to the
25 water management districts; authorizing the department or a
26 water management district to contract with a private entity to
27 carry out certain responsibilities relating to continuing
28 education; providing water well contractor

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **1063 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Agriculture and Environment
2 Appropriations
3 Representative(s) Stansel offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove line(s) 79-83 and insert:
7 period in order to qualify for the extension.
8
9 ========== T I T L E A M E N D M E N T ==========
10 Remove line(s) 19-20 and insert:
11 circumstances; amending s. 373.333, F.S.;

000000

HB 1345

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Blue Crabs

Background

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

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

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

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

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

Based upon public testimony at the April 2005 meeting, the Commissioners directed staff to investigate mechanisms to accommodate fishers affected by the 1995 Net Limitation Constitutional Amendment

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

(Article X, Section 16, Florida Constitution) who have a blue crab endorsement but no qualifying landings, and in other fisheries in which blue crab bycatch is permitted. This affected several thousand commercial fishers who used this type of gear to harvest inshore species such as mullet. In 2000, a limited entry program for the stone crab fishery was implemented that issued trap tag certificates based upon reported commercial stone crab landings. Bona fide displaced netters, who would not have qualified to be in the program, were awarded a certain amount of trap certificates as compensation for the loss of their net gear. Many of these displaced net fishers also possess a blue crab endorsement, but do not have any reported blue crab landings during the qualifying years. These endorsements are free and have been renewed over the years as an additional fishery option should their principal fishery fail. Staff developed language by which qualified displaced netters could be issued a non-transferable blue crab endorsement that would make them eligible for up to 100 trap tags.

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

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

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

Current Law

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

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

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

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

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

Spiny Lobster

Background

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

Current Law

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

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

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

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

Trap Retrieval Program

Background

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

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

While spiny lobster and stone crab have long had specific closed seasons, blue crab has been a year-round fishery until recently. In 2003, the Commission closed the blue crab fishery in an area north and west of the Suwannee River seaward of a line three nautical miles from shore for the 14 days prior to stone crab season. In 2004, the 14-day closure zone was extended to the entire Gulf Coast, seaward of the three-nautical-mile line. The principal reason for excluding blue crab traps from waters beyond the three mile line is to preclude the possibility that such traps could be used to collect stone crab immediately prior to the beginning of the stone crab fishing season.

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

Current Law

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

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

EFFECT OF PROPOSED CHANGES

Blue Crabs

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

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

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

The bill also requires an annual fee of 50 cents for each blue crab trap tag. The fee for replacement tags that have been lost or damaged is also 50 cents plus the cost of shipping.

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

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

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

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

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

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

Spiny Lobster

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

Trap Retrieval Program

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

C. SECTION DIRECTORY:

Section 1. Amends s. 370.135, F.S., to address fees, penalties, and equitable rent relating to blue crab traps.

Section 2. Provides appropriations for the blue crab trap tag program and the Blue Crab Advisory Board.

Section 3. Amends s. 370.142, F.S., to provide for administrative penalties relating to the spiny lobster trap certificate program.

Section 4. Amends s. 370.143, F.S., to add blue crabs and black sea bass to the trap retrieval program.

Section 5. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) has not considered the prison bed impact, if any, of the third degree felony in the bill. The bill modifies an existing third degree felony relating to blue crab trap molestation by moving the offense to a different subsection, providing additional direction of its scope, and by making the penalty for violation of commission rule. Typically, the CJIC estimates a third degree felony with a Level 1 ranking on the offense severity ranking chart will have an insignificant prison bed impact, absent any significant prior criminal history. Probation, a likely non-prison sanction, has an indeterminate but probably minimal fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to exercise the regulatory and executive powers of the state with respect to fresh water aquatic life, marine life, and wild animal life. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to saltwater fisheries; amending s.
3 370.135, F.S.; establishing certain endorsement fees for
4 the taking of blue crabs; establishing an annual trap tag
5 fee; authorizing the Fish and Wildlife Conservation
6 Commission to establish by rule an amount of equitable
7 rent for access to state natural resources; requiring
8 approval of such rule by the Governor and Cabinet;
9 requiring the deposit of certain proceeds into the Marine
10 Resources Conservation Trust Fund; specifying the use of
11 such proceeds; providing administrative penalties for
12 certain violations; prohibiting the unauthorized
13 possession of trap gear or removal of trap contents and
14 providing penalties therefor; providing penalties for
15 certain other prohibited activities relating to traps,
16 lines, buoys, and trap tags; providing penalties for
17 fraudulent reports related to endorsement transfers;
18 prohibiting certain activities during endorsement
19 suspension and revocation; preserving state jurisdiction
20 for certain convictions; providing requirements for
21 certain license renewal; appropriating certain fee
22 revenues to the commission for blue crab effort management
23 program costs; requiring the commission to create an
24 advisory board; amending s. 370.142, F.S.; providing
25 administrative penalties for certain violations of the
26 spiny lobster trap certificate program; amending s.
27 370.143, F.S.; revising provisions for certain trap
28 retrieval programs and fees; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsection (1) of section 370.135, Florida
33 Statutes, is amended, and subsections (3), (4), and (5) are
34 added to that section, to read:
35 370.135 Blue crab; regulation.--
36 (1) No person, firm, or corporation shall transport on the
37 water, fish with or cause to be fished with, set, or place any
38 trap designed for taking blue crabs unless such person, firm, or
39 corporation is the holder of a valid saltwater products license
40 issued pursuant to s. 370.06 and the trap has a current state
41 number permanently attached to the buoy. The trap number shall
42 be affixed in legible figures at least 1 inch high on each buoy
43 used. The saltwater products license must be on board the boat,
44 and both the license and the crabs shall be subject to
45 inspection at all times. Only one trap number may be issued for
46 each boat by the commission upon receipt of an application on
47 forms prescribed by it. This subsection shall not apply to an
48 individual fishing with no more than five traps. ~~It is a felony~~
49 ~~of the third degree, punishable as provided in s. 775.082, s.~~
50 ~~775.083, or s. 775.084, for any person willfully to molest any~~
51 ~~traps, lines, or buoys, as defined herein, belonging to another~~
52 ~~without the express written consent of the trap owner. Any~~
53 ~~person receiving a judicial disposition other than dismissal or~~
54 ~~acquittal on a charge of willful molestation of a trap, in~~
55 ~~addition to the penalties specified in s. 370.021, shall lose~~
56 ~~all saltwater fishing privileges for a period of 24 calendar~~

57 ~~months. It is unlawful for any person to remove the contents of~~
58 ~~or take possession of another harvester's trap without the~~
59 ~~express written consent of the trap owner available for~~
60 ~~immediate inspection. Unauthorized possession of another's trap~~
61 ~~gear or removal of trap contents constitutes theft. Any person~~
62 ~~receiving a judicial disposition other than dismissal or~~
63 ~~acquittal on a charge of theft of or from a trap pursuant to~~
64 ~~this section or s. 370.1107 shall, in addition to the penalties~~
65 ~~specified in s. 370.021 and the provisions of this section,~~
66 ~~permanently lose all his or her saltwater fishing privileges~~
67 ~~including his or her saltwater products license and blue crab~~
68 ~~endorsement. In such cases endorsements, landings history, and~~
69 ~~trap certificates are nontransferable. In addition, any person,~~
70 ~~firm, or corporation receiving a judicial disposition other than~~
71 ~~dismissal or acquittal for violating this subsection or s.~~
72 ~~370.1107 shall also be assessed an administrative penalty of up~~
73 ~~to $5,000. Immediately upon receiving a citation for a violation~~
74 ~~involving theft of or from a trap and until adjudicated for such~~
75 ~~a violation, or receiving a judicial disposition other than~~
76 ~~dismissal or acquittal for such a violation, the person, firm,~~
77 ~~or corporation committing the violation is prohibited from~~
78 ~~transferring any blue crab endorsements, landings history, or~~
79 ~~trap certificates.~~
80 (3)(a) Endorsement fees.--
81 1. The fee for a hard-shell blue crab endorsement for the
82 taking of hard-shell blue crabs, as required by rule of the
83 commission, is $125, $25 of which must be used solely for trap

84 retrieval under s. 370.143 and rule 68B-55, Florida
85 Administrative Code.
86 2. The fee for a soft-shell blue crab endorsement for the
87 taking of soft-shell blue crabs, as required by rule of the
88 commission, is $250, $25 of which must be used solely for trap
89 retrieval under s. 370.143 and rule 68B-55, Florida
90 Administrative Code.
91 3. The fee for a nontransferable blue crab endorsement for
92 the taking of hard-shell blue crabs, as required by rule of the
93 commission, is $125, $25 of which must be used solely for trap
94 retrieval under s. 370.143 and rule 68B-55, Florida
95 Administrative Code.
96 4. The fee for an incidental-take blue crab endorsement
97 for the taking of blue crabs as bycatch in shrimp trawls and
98 stone crab traps, as established by commission rule, is $25.
99 (b) Trap tag fees.--For each trap tag issued by the
100 commission under the requirements of the blue crab effort
101 management program established by commission rule, there is an
102 annual fee of 50 cents per tag. The fee for replacement tags for
103 lost or damaged tags is 50 cents each plus shipping, except that
104 the commission shall either temporarily defer or permanently
105 waive fees for replacement tags for traps lost in the event of a
106 major natural disaster declared as an emergency by the Governor
107 in any area of massive trap losses within the designated
108 disaster area.
109 (c) Equitable rent.--The commission may establish by rule
110 an amount of equitable rent that may be recovered as partial
111 compensation to the state for the enhanced access to its natural

112 resources. In determining whether to establish such a rent and
113 the amount thereof, the commission may consider the amount of
114 revenues annually generated by endorsement fees, trap tag fees,
115 replacement trap tag fees, trap retrieval fees, and the
116 continued economic viability of the commercial blue crab
117 industry. Final approval of such a rule shall be by the Governor
118 and Cabinet sitting as the Board of Trustees of the Internal
119 Improvement Trust Fund.
120 (d) Disposition of fees, surcharges, civil penalties and
121 fines, and equitable rent.--Endorsement fees, trap tag fees,
122 civil penalties and fines, replacement trap tag fees, trap
123 retrieval fees, and equitable rent, if any, shall be deposited
124 in the Marine Resources Conservation Trust Fund. Not more than
125 50 percent of the revenues generated under this section may be
126 used for the operation and administration of the blue crab
127 effort management program. The remaining revenues generated
128 under this section shall be used for trap retrieval, management
129 of the blue crab fishery, public education activities, research,
130 and enforcement activities in support of the blue crab effort
131 management program.
132 (4)(a) Untagged trap penalties.--In addition to any other
133 penalties provided in s. 370.021 for any person, firm, or
134 corporation that violates rule 68B-45.007(6)(b), Florida
135 Administrative Code, the following administrative penalties
136 apply:
137 1. For a first violation, the commission shall assess an
138 administrative penalty of up to $1,000 and the blue crab

139 endorsement holder's blue crab fishing privileges may be
140 suspended for the remainder of the current license year.
141 2. For a second violation that occurs within 24 months
142 after any previous such violation, the commission shall assess
143 an administrative penalty of up to $2,000 and the blue crab
144 endorsement holder's blue crab fishing privileges may be
145 suspended for 12 calendar months.
146 3. For a third violation that occurs within 36 months
147 after any two previous such violations, the commission shall
148 assess an administrative penalty of up to $5,000 and the blue
149 crab endorsement holder's blue crab fishing privileges may be
150 suspended for 24 calendar months.
151 4. A fourth violation that occurs within 48 months after
152 any three previous such violations shall result in permanent
153 revocation of all of the violator's saltwater fishing
154 privileges, including having the commission proceed against the
155 endorsement holder's saltwater products license in accordance
156 with s. 370.021.
157
158 Any person assessed an administrative penalty under this
159 paragraph shall, within 30 calendar days after notification, pay
160 the administrative penalty to the commission or request an
161 administrative hearing under ss. 120.569 and 120.57. The
162 proceeds of all administrative penalties collected under this
163 paragraph shall be deposited in the Marine Resources
164 Conservation Trust Fund.
165 (b) Trap theft; prohibitions and penalties.--It is
166 unlawful for any person to remove or take possession of the

167 contents of another harvester's trap without the express written
168 consent of the trap owner, which must be available for immediate
169 inspection. Unauthorized possession of another harvester's trap
170 gear or removal of trap contents constitutes theft. Any person
171 convicted of theft of or from a trap pursuant to this paragraph
172 shall, in addition to the penalties specified in s. 370.021 and
173 the provisions of this section, permanently lose all of his or
174 her saltwater fishing privileges, including saltwater products
175 licenses, blue crab endorsements, and all trap tags allotted to
176 him or her by the commission. In such cases, endorsements are
177 nontransferable. In addition, any person, firm, or corporation
178 convicted of a violation of this paragraph shall also be
179 assessed an administrative penalty of up to $5,000. Immediately
180 upon receiving a citation for a violation involving theft of or
181 from a trap and until adjudicated for such a violation or upon
182 receipt of a judicial disposition other than dismissal or
183 acquittal on such a violation, the violator is prohibited from
184 transferring any blue crab endorsement.
185 (c) Criminal activities.--Any person, firm, or corporation
186 convicted of violating commission rules that prohibit any of the
187 following commits a felony of the third degree, punishable as
188 provided in s. 775.082, s. 775.083, or s. 775.084:
189 1. The willful molestation of any blue crab trap, line, or
190 buoy that is the property of any licenseholder, without the
191 permission of that licenseholder.
192 2. The bartering, trading, leasing, or sale, or conspiring
193 or aiding in such barter, trade, lease, or sale, or supplying,
194 agreeing to supply, aiding in supplying, or giving away blue

195 crab trap tags unless the action is duly authorized by the
196 commission as provided by commission rules.
197 3. The making, altering, forging, counterfeiting, or
198 reproducing of blue crab trap tags.
199 4. Possession of altered, forged, counterfeit, or
200 imitation blue crab trap tags.
201 5. Possession of commission-issued original trap tags and
202 commission-issued replacement trap tags, the sum of which
203 exceeds by 1 percent the number of traps allowed by rule of the
204 commission.
205 6. Engaging in the commercial harvest of blue crabs during
206 the time the licenseholder's blue crab endorsements are under
207 suspension or revocation.
208
209 Any person, firm, or corporation convicted of a violation of
210 this paragraph shall be assessed an administrative penalty of up
211 to $5,000, and all of the blue crab endorsements possessed by
212 the person, firm, or corporation may be suspended for up to 24
213 calendar months. Immediately upon receiving a citation involving
214 a violation of this paragraph and until adjudicated for such a
215 violation, or if convicted of such a violation, the person,
216 firm, or corporation committing the violation is prohibited from
217 transferring any blue crab endorsements.
218 (d) Endorsement transfers; fraudulent reports;
219 penalties.--For any person, firm, or corporation convicted of
220 fraudulently reporting the actual value of transferred blue crab
221 endorsements, the commission may automatically suspend or
222 permanently revoke the seller's or the purchaser's blue crab

223 endorsements. If the endorsement is permanently revoked, the
224 commission shall also permanently deactivate the endorsement
225 holder's blue crab trap tag accounts.
226 (e) Prohibitions during endorsement suspension and
227 revocation.--During any period of suspension or revocation of a
228 blue crab endorsement holder's endorsements, he or she shall,
229 within 15 days after notice provided by the commission, remove
230 from the water all traps subject to that endorsement. Failure to
231 do so shall extend the period of suspension or revocation for an
232 additional 6 calendar months.
233 (5) For purposes of this section, a conviction is any
234 disposition other than acquittal or dismissal.
235 (6) An endorsement may not be renewed until all fees and
236 administrative penalties imposed under this section are paid.
237 Section 2. In order to implement the blue crab effort
238 management program pursuant to s. 370.135(3)(b), Florida
239 Statutes, including the creation of the Blue Crab Advisory Board
240 by commission rule, there is appropriated from the commercial
241 saltwater license fee revenues in the Marine Resources
242 Conservation Trust Fund to the Office of Licenses and Permits in
243 the Fish and Wildlife Conservation Commission the sum of
244 $120,000 for program cost and the cost of blue crab trap tags
245 for the fiscal year 2006-2007, and there is appropriated from
246 the commercial saltwater license fee revenues in the Marine
247 Resources Conservation Trust Fund to the Division of Marine
248 Fisheries Management an additional sum of $12,000 for the
249 operational and administrative costs of the Blue Crab Advisory
250 Board.

251 Section 3. Paragraph (c) of subsection (2) of section
252 370.142, Florida Statutes, is amended to read:
253 370.142 Spiny lobster trap certificate program.--
254 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;
255 PENALTIES.--The Fish and Wildlife Conservation Commission shall
256 establish a trap certificate program for the spiny lobster
257 fishery of this state and shall be responsible for its
258 administration and enforcement as follows:
259 (c) Prohibitions; penalties.--
260 1. It is unlawful for a person to possess or use a spiny
261 lobster trap in or on state waters or adjacent federal waters
262 without having affixed thereto the trap tag required by this
263 section. It is unlawful for a person to possess or use any other
264 gear or device designed to attract and enclose or otherwise aid
265 in the taking of spiny lobster by trapping that is not a trap as
266 defined in rule 68B-24.006(2), Florida Administrative Code.
267 2. It is unlawful for a person to possess or use spiny
268 lobster trap tags without having the necessary number of
269 certificates on record as required by this section.
270 3. It is unlawful for any person to willfully molest, take
271 possession of, or remove the contents of another harvester's
272 trap without the express written consent of the trap owner
273 available for immediate inspection. Unauthorized possession of
274 another's trap gear or removal of trap contents constitutes
275 theft. Any person receiving a judicial disposition other than
276 dismissal or acquittal on a charge of theft of or from a trap
277 pursuant to this subparagraph or s. 370.1107 shall, in addition
278 to the penalties specified in ss. 370.021 and 370.14 and the

279 provisions of this section, permanently lose all his or her
280 saltwater fishing privileges, including his or her saltwater
281 products license, crawfish endorsement, and all trap
282 certificates allotted to him or her through this program. In
283 such cases, trap certificates and endorsements are
284 nontransferable. Any person receiving a judicial disposition
285 other than dismissal or acquittal on a charge of willful
286 molestation of a trap, in addition to the penalties specified in
287 ss. 370.021 and 370.14, shall lose all saltwater fishing
288 privileges for a period of 24 calendar months. In addition, any
289 person, firm, or corporation charged with violating this
290 paragraph and receiving a judicial disposition other than
291 dismissal or acquittal for violating this subparagraph or s.
292 370.1107 shall also be assessed an administrative penalty of up
293 to $5,000. Immediately upon receiving a citation for a violation
294 involving theft of or from a trap, or molestation of a trap, and
295 until adjudicated for such a violation or, upon receipt of a
296 judicial disposition other than dismissal or acquittal of such a
297 violation, the person, firm, or corporation committing the
298 violation is prohibited from transferring any crawfish trap
299 certificates and endorsements.
300 4. In addition to any other penalties provided in s.
301 370.021, a commercial harvester, as defined by rule 68B-
302 24.002(1), Florida Administrative Code, who violates the
303 provisions of this section, or the provisions relating to traps
304 of chapter 68B-24, Florida Administrative Code, shall be
305 punished as follows:

306 a. If the first violation is for violation of subparagraph
307 1. or subparagraph 2., the commission shall assess an additional
308 civil penalty of up to $1,000 and the crawfish trap number
309 issued pursuant to s. 370.14(2) or (6) may be suspended for the
310 remainder of the current license year. For all other first
311 violations, the commission shall assess an additional civil
312 penalty of up to $500.
313 b. For a second violation of subparagraph 1. or
314 subparagraph 2. which occurs within 24 months of any previous
315 such violation, the commission shall assess an additional civil
316 penalty of up to $2,000 and the crawfish trap number issued
317 pursuant to s. 370.14(2) or (6) may be suspended for the
318 remainder of the current license year.
319 c. For a third or subsequent violation of subparagraph 1.,
320 subparagraph 2., or subparagraph 3. which occurs within 36
321 months of any previous two such violations, the commission shall
322 assess an additional civil penalty of up to $5,000 and may
323 suspend the crawfish trap number issued pursuant to s. 370.14(2)
324 or (6) for a period of up to 24 months or may revoke the
325 crawfish trap number and, if revoking the crawfish trap number,
326 may also proceed against the licenseholder's saltwater products
327 license in accordance with the provisions of s. 370.021(2)(h).
328 d. Any person assessed an additional civil penalty
329 pursuant to this section shall within 30 calendar days after
330 notification:
331 (I) Pay the civil penalty to the commission; or
332 (II) Request an administrative hearing pursuant to the
333 provisions of s. 120.60.

334 e. The commission shall suspend the crawfish trap number
335 issued pursuant to s. 370.14(2) or (6) for any person failing to
336 comply with the provisions of sub-subparagraph d.
337 5.a. It is unlawful for any person to make, alter, forge,
338 counterfeit, or reproduce a spiny lobster trap tag or
339 certificate.
340 b. It is unlawful for any person to knowingly have in his
341 or her possession a forged, counterfeit, or imitation spiny
342 lobster trap tag or certificate.
343 c. It is unlawful for any person to barter, trade, sell,
344 supply, agree to supply, aid in supplying, or give away a spiny
345 lobster trap tag or certificate or to conspire to barter, trade,
346 sell, supply, aid in supplying, or give away a spiny lobster
347 trap tag or certificate unless such action is duly authorized by
348 the commission as provided in this chapter or in the rules of
349 the commission.
350 6.a. Any person who violates the provisions of
351 subparagraph 5., or any person who engages in the commercial
352 harvest, trapping, or possession of spiny lobster without a
353 crawfish trap number as required by s. 370.14(2) or (6) or
354 during any period while such crawfish trap number is under
355 suspension or revocation, commits a felony of the third degree,
356 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
357 b. In addition to any penalty imposed pursuant to sub-
358 subparagraph a., the commission shall levy a fine of up to twice
359 the amount of the appropriate surcharge to be paid on the fair
360 market value of the transferred certificates, as provided in

361 subparagraph (a)1., on any person who violates the provisions of
362 sub-subparagraph 5.c.
363 c. In addition to any penalty imposed pursuant to sub-
364 subparagraph a., any person receiving any judicial disposition
365 other than acquittal or dismissal for a violation of
366 subparagraph 5. shall be assessed an administrative penalty of
367 up to $5,000, and the crawfish endorsement under which the
368 violation was committed may be suspended for up to 24 calendar
369 months. Immediately upon issuance of a citation involving a
370 violation of subparagraph 5. and until adjudication of such a
371 violation, and after receipt of any judicial disposition other
372 than acquittal or dismissal for such a violation, the person
373 holding the crawfish endorsement listed on the citation is
374 prohibited from transferring any spiny lobster trap
375 certificates.
376 7. Any certificates for which the annual certificate fee
377 is not paid for a period of 3 years shall be considered
378 abandoned and shall revert to the commission. During any period
379 of trap reduction, any certificates reverting to the commission
380 shall become permanently unavailable and be considered in that
381 amount to be reduced during the next license-year period.
382 Otherwise, any certificates that revert to the commission are to
383 be reallotted in such manner as provided by the commission.
384 8. The proceeds of all civil penalties collected pursuant
385 to subparagraph 4. and all fines collected pursuant to sub-
386 subparagraph 6.b. shall be deposited into the Marine Resources
387 Conservation Trust Fund.

388 9. All traps shall be removed from the water during any
389 period of suspension or revocation.
390 Section 4. Subsections (1), (2), and (3) of section
391 370.143, Florida Statutes, are amended to read:
392 370.143 Retrieval of spiny lobster, ~~crawfish, and~~ stone
393 crab, blue crab, and black sea bass traps during closed season;
394 commission authority; fees.--
395 (1) The Fish and Wildlife Conservation Commission is
396 authorized to implement a trap retrieval program for retrieval
397 of spiny lobster, ~~crawfish, and~~ stone crab, blue crab, and black
398 sea bass traps remaining in the water during the closed season
399 for each species. The commission is authorized to contract with
400 outside agents for the program operation.
401 (2) A retrieval fee of $10 per trap retrieved shall be
402 assessed trap owners. However, for each person holding a spiny
403 lobster endorsement, ~~crawfish stamp number or~~ a stone crab
404 endorsement, or a blue crab endorsement issued under rule of the
405 commission, the retrieval fee shall be waived for the first five
406 traps retrieved. Traps recovered under this program shall become
407 the property of the commission or its contract agent, as
408 determined by the commission, and shall be either destroyed or
409 resold to the original owner. Revenue from retrieval fees shall
410 be deposited in the Marine Resources Conservation Trust Fund and
411 used solely for operation of the trap retrieval program.
412 (3) Payment of all assessed retrieval fees shall be
413 required prior to renewal of the trap owner's saltwater products
414 license ~~and stone crab and or crawfish endorsements~~. Retrieval

415 fees assessed under this program shall stand in lieu of other
416 penalties imposed for such trap violations.
417 Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **1345**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment**
6 Remove line(s) 103-108 and insert:
7
8 lost or damaged tags is 50 cents each plus shipping. In the
9 event of a major natural disaster, such as a hurricane or major
10 storm, which causes massive trap losses within an area declared
11 by the Governor to be a disaster emergency area, the commission
12 may temporarily defer or permanently waive replacement tag fees.
13
14
15

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **1345**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment (with title amendment)**
6 Between line(s) 131 and 132, insert:
7
8 (e) Waiver of fees.- For the 2006-2007 license year, the
9 commission may waive all fees under this subsection for all
10 persons who qualify by September 30, 2006, to participate in the
11 blue crab effort management program established by commission
12 rule.
13
14 ========== T I T L E A M E N D M E N T ==========
15 Remove line(s) 11 and insert:
16 such proceeds; authorizing the commission to waive
17 endorsement and tag fees for a one year period; providing
18 administrative penalties for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **1345**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment**
6 Remove line(s) 237-250 and insert:
7
8 Section 2. For the 2006-2007 fiscal year, the sum of
9 $132,000 is appropriated from the Marine Resources Conservation
10 Trust Fund to the Fish and Wildlife Conservation Commission on a
11 recurring basis for the purpose of implementing the blue crab
12 effort management program pursuant to s. 370.135(3)(b), and
13 administrative costs of the Blue Crab Advisory Board as created
14 by commission rule.
15

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment (with title amendment)**
6 Between line(s) 250 and 251, insert a new section:
7
8 Section 3. Paragraph (b) of subsection (1) of section
9 370.13, Florida Statutes, is amended to read:
10 370.13 Stone crab; regulation.-
11 (1) FEES AND EQUITABLE RENT.-
12 (b) Certificate fees.--
13 1. For each trap certificate issued by the commission
14 under the requirements of the stone crab trap limitation program
15 established by commission rule, there is an annual fee of 50
16 cents per certificate. Replacement tags for lost or damaged tags
17 cost 50 cents each. In the event of a major natural disaster,
18 such as a hurricane or major storm, which causes massive trap
19 losses within an area declared by the Governor to be a disaster
20 emergency area, the commission may temporarily defer or
21 permanently waive replacement tag fees. ~~, except that tags lost~~

22 ~~in the event of a major natural disaster declared as an~~
23 ~~emergency disaster by the Governor shall be replaced for the~~
24 ~~cost of the tag as incurred by the commission~~.
25 2. The fee for transferring trap certificates is $1 per
26 certificate transferred, except that the fee for eligible crew
27 members is 50 cents per certificate transferred. Eligible crew
28 members shall be determined according to criteria established by
29 rule of the commission. Payment must be made by money order or
30 cashier's check, submitted with the certificate transfer form
31 developed by the commission.
32 3. In addition to the transfer fee, a surcharge of $1 per
33 certificate transferred, or 25 percent of the actual value of
34 the transferred certificate, whichever is greater, will be
35 assessed the first time a certificate is transferred outside the
36 original holder's immediate family.
37 4. Transfer fees and surcharges only apply to the actual
38 number of certificates received by the purchaser. A transfer of
39 a certificate is not effective until the commission receives a
40 notarized copy of the bill of sale as proof of the actual value
41 of the transferred certificate or certificates, which must also
42 be submitted with the transfer form and payment.
43 5. A transfer fee will not be assessed or required when
44 the transfer is within a family as a result of the death or
45 disability of the certificate owner. A surcharge will not be
46 assessed for any transfer within an individual's immediate
47 family.
48 6. The fees and surcharge amounts in this paragraph apply
49 in the 2005-2006 license year and subsequent years.
50
51

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

53 Remove line(s) 24 and insert:

54 advisory board; amending s. 370.13, F.S.; amending

55 370.142, F.S.; providing

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment (with title amendment)**
6 Remove line(s) 251-258 and insert:
7 Section 3. Paragraphs (b) and (c) of subsection (2) of
8 section 370.142, Florida Statutes, are amended to read:
9 370.142 Spiny lobster trap certificate program.--
10 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;
11 PENALTIES.—The Fish and Wildlife Conservation Commission shall
12 establish a trap certificate program for the spiny lobster
13 fishery of this state and shall be responsible for its
14 administration and enforcement as follows:
15 (b) Trap tags.--Each trap used to take or attempt to take
16 spiny lobsters in state waters or adjacent federal waters shall,
17 in addition to the crawfish trap number required by s.
18 370.14(2), have affixed thereto an annual trap tag issued by the
19 commission. Each such tag shall be made of durable plastic or
20 similar material and shall, based on the number of certificates
21 held, have stamped thereon the owner's license number. To

22 facilitate enforcement and recordkeeping, such tags shall be
23 issued each year in a color different from that of each of the
24 previous 3 years. The annual certificate fee shall be $1 per
25 certificate. Replacement tags for lost or damaged tags may be
26 obtained as provided by rule of the commission. In the event of
27 a major natural disaster, such as a hurricane or major storm,
28 which causes massive trap losses within an area declared by the
29 Governor to be a disaster emergency area, the commission may
30 temporarily defer or permanently waive replacement tag fees.
31
32
33 ========== T I T L E A M E N D M E N T ==========
34 Between line(s) 24 and 25, insert:
35 authorization to defer or waive fees due to emergency
36 declaration; providing

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment (with title amendment)**
6 Between line(s) 416 and 417, insert a new section:
7
8 Section 5. Paragraph (j) is added to subsection (1) of
9 section 370.0603, Florida Statutes, and paragraphs (c) and (d)
10 of subsection (2) of the same section are amended to read:
11 370.0603 The Marine Resources Conservation Trust Fund;
12 purposes.-
13 (1) The Marine Resources Conservation Trust Fund within the
14 Fish and Wildlife Conservation Commission shall serve as a
15 broad-based depository for funds from various marine-related and
16 boating-related activities and shall be administered by the
17 commission for the purposes of:
18 (j) Funding the stone crab trap reduction program under s.
19 370.13, the blue crab effort management program under s.
20 370.135, the spiny lobster trap certificate program under s.
21 370.142, and the trap retrieval program under s. 370.143.

22 (2) The Marine Resources Conservation Trust Fund shall
23 receive the proceeds from:
24 (c) All fees collected pursuant to ss. 370.063, 370.13,
25 370.135, 370.142, 370.143, and 372.5704.
26 (d) All fines and penalties pursuant to ss. ~~s.~~ 370.021,
27 370.13, 370.135, and 370.142.
28
29
30 ========== T I T L E A M E N D M E N T ==========
31 Remove line(s) 28 and insert:
32 retrieval programs and fees; amending s. 370.0603, F.S.;
33 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	7 Y, 0 N	Perkins	Kliner
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
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.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

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

B. EFFECT OF PROPOSED CHANGES:

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

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

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

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

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

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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.

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:

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

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

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

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

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that the bill would further encourage petroleum facilities to perform the secondary containment upgrading of underground petroleum storage tanks in advance of the December 31, 2009 deadline. The discovery of additional contamination that is folded into the existing state funded discharge cleanup may also provide an economic benefit to the insurance industry, as they will not have to fund the expanded cleanups.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
1) Agriculture & Environment Appropriations Committee		Dixon	Dixon
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The 2002 revisions to the SWMA also:

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

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

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

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

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

The last time the Solid Waste Management Act was substantially rewritten was in 1993. Although there have been several amendments to the statutory provisions since that time, these amendments have

been piecemeal and the issues have not been addressed in a comprehensive manner. In the past few years, issues have arisen regarding recycling and disposal of vegetative and construction and demolition debris. This problem has been exacerbated by the fact that Florida was hit with four major hurricanes in 2004 and by Hurricanes Dennis, Katrina, and Wilma in 2005.

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

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

Effect of Proposed Changes

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

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

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

- Holding public hearings to develop rules to implement the state's solid waste management program. This is obsolete because rulemaking provisions of s. 120.54, F.S., include workshops and hearings.

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

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

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

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

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

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

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

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

The DEP may issue field authorizations for staging areas in those counties affected by a storm event. These staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. A local government shall avoid locating a staging area in wetlands and other surface waters to the greatest extent possible, and the area that is used or affected by a staging area must be fully restored upon cessation of use of the area.

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

Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.

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

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

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

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

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

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

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

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

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

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

Section 20. Section 403.716, F.S., is amended to delete provisions relating to the training of operators for waste-to-energy facilities, biomedical waste incinerators, and mobile soil thermal treatment units or

facilities. The operators of these facilities are subject to the DEP's rules relating to training requirements under air permits. There has never been a separate solid waste training program for these operators.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 30. Sections 403.7075, 403.756, 403.78, 403,781, 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, F.S., relating to the Statewide Multipurpose Hazardous Waste Facility Siting Act, are repealed. This act has never been used and it is unlikely that a facility will ever be sited in Florida using these provisions. The repeal of s. 403.7075, F.S., relating to the submission of plans by certain persons to construct and operate a solid waste facility, is due to a conflict with the provisions in ch. 471, F.S., which regulates professional engineers. The repeal of s. 403.756, F.S., relating to a used oil report, is due to the fact that this information will be included in the DEP's Solid Waste Management in Florida report.

Section 31. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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

aIV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

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

29 amending s. 403.7043, F.S.; deleting certain obsolete and
30 conflicting provisions relating to compost standards;
31 amending s. 403.7045, F.S.; providing that industrial
32 byproducts are not regulated under certain circumstances;
33 conforming a cross-reference; clarifying certain
34 provisions governing dredged material; amending s.
35 403.707, F.S.; clarifying the Department of Environmental
36 Preservation's permit authority; deleting certain obsolete
37 provisions; creating s. 403.7071, F.S.; providing for the
38 management and disposal of storm-generated debris;
39 amending s. 403.708, F.S.; deleting obsolete provisions
40 and clarifying certain provisions governing landfills;
41 amending s. 403.709, F.S.; revising the provisions
42 relating to the distribution of the waste tire fees;
43 amending s. 403.7095, F.S., relating to the solid waste
44 management grant program; conforming a cross-reference;
45 amending s. 403.7125, F.S.; deleting certain definitions
46 that appear elsewhere in law and clarifying certain
47 financial-disclosure provisions with respect to the
48 closure of a landfill; amending s. 403.716, F.S.; deleting
49 certain provisions relating to the training of certain
50 facility operators; amending s. 403.717, F.S.; clarifying
51 the provisions relating to waste tires and the processing
52 of waste tires; transferring, renumbering, and amending s.
53 403.7221, F.S.; increasing the duration of certain
54 research, development, and demonstration permits; amending
55 s. 403.201, F.S.; conforming a cross-reference; amending
56 s. 403.722, F.S.; clarifying provisions relating to who is

57 required to obtain certain hazardous waste permits;
58 amending s. 403.7226, F.S.; deleting a provision requiring
59 a report that is duplicative of other reports; amending s.
60 403.724, F.S.; clarifying certain financial-responsibility
61 provisions; amending s. 403.7255, F.S.; providing
62 additional requirements regarding the public notification
63 of certain contaminated sites; amending s. 403.726, F.S.;
64 authorizing the Department of Environmental Protection to
65 issue an order to abate certain hazards; amending s.
66 403.7265, F.S.; requiring a local government to provide
67 matching funds for certain grants; providing that matching
68 funds are not required under certain conditions; repealing
69 s. 403.7075, F.S., relating to the submission of certain
70 plans for solid waste management facilities; repealing s.
71 403.756, F.S., relating to an annual used-oil report;
72 repealing ss. 403.78, 403.781, 403.782, 403.783, 403.784,
73 403.7841, 403.7842, 403.785, 403.786, 403.787, 403.7871,
74 403.7872, 403.7873, 403.788, 403.7881, 403.789, 403.7891,
75 403.7892, 403.7893, and 403.7895, F.S., relating to the
76 Statewide Multipurpose Hazardous Waste Facility Siting
77 Act; providing an effective date.
78
79 Be It Enacted by the Legislature of the State of Florida:
80
81 Section 1. Subsection (4) of section 403.413, Florida
82 Statutes, is amended to read:
83 403.413 Florida Litter Law.--
84 (4) DUMPING LITTER PROHIBITED.--Unless otherwise

85 authorized by law or permit, it is unlawful for any person to
86 dump litter in any manner or amount:
87 (a) In or on any public highway, road, street, alley, or
88 thoroughfare, including any portion of the right-of-way thereof,
89 or any other public lands, except in containers or areas
90 lawfully provided therefor. When any litter is thrown or
91 discarded from a motor vehicle, the operator or owner of the
92 motor vehicle, or both, shall be deemed in violation of this
93 section;
94 (b) In or on any freshwater lake, river, canal, or stream
95 or tidal or coastal water of the state, including canals. When
96 any litter is thrown or discarded from a boat, the operator or
97 owner of the boat, or both, shall be deemed in violation of this
98 section; or
99 (c) In or on any private property, unless prior consent of
100 the owner has been given and unless the dumping of such litter
101 by such person will not cause a public nuisance or otherwise be
102 in violation of any other state or local law, rule, or
103 regulation.
104 Section 2. Section 403.4131, Florida Statutes, is amended
105 to read:
106 403.4131 Litter control; Wildflower Advisory Council ~~"Keep~~
107 ~~Florida Beautiful, Incorporated"; placement of signs~~.--
108 ~~(1) It is the intent of the Legislature that a coordinated~~
109 ~~effort of interested businesses, environmental and civic~~
110 ~~organizations, and state and local agencies of government be~~
111 ~~developed to plan for and assist in implementing solutions to~~
112 ~~the litter and solid waste problems in this state and that the~~

113 ~~state provide financial assistance for the establishment of a~~
114 ~~nonprofit organization with the name of "Keep Florida Beautiful,~~
115 ~~Incorporated," which shall be registered, incorporated, and~~
116 ~~operated in compliance with chapter 617. This nonprofit~~
117 ~~organization shall coordinate the statewide campaign and operate~~
118 ~~as the grassroots arm of the state's effort and shall serve as~~
119 ~~an umbrella organization for volunteer-based community programs.~~
120 ~~The organization shall be dedicated to helping Florida and its~~
121 ~~local communities solve solid waste problems, to developing and~~
122 ~~implementing a sustained litter prevention campaign, and to act~~
123 ~~as a working public-private partnership in helping to implement~~
124 ~~the state's Solid Waste Management Act. As part of this effort,~~
125 ~~Keep Florida Beautiful, Incorporated, in cooperation with the~~
126 ~~Environmental Education Foundation, shall strive to educate~~
127 ~~citizens, visitors, and businesses about the important~~
128 ~~relationship between the state's environment and economy. Keep~~
129 ~~Florida Beautiful, Incorporated, is encouraged to explore and~~
130 ~~identify economic incentives to improve environmental~~
131 ~~initiatives in the area of solid waste management. The~~
132 ~~membership of the board of directors of this nonprofit~~
133 ~~organization may include representatives of the following~~
134 ~~organizations: the Florida League of Cities, the Florida~~
135 ~~Association of Counties, the Governor's Office, the Florida~~
136 ~~Chapter of the National Solid Waste Management Association, the~~
137 ~~Florida Recyclers Association, the Center for Marine~~
138 ~~Conservation, Chapter of the Sierra Club, the Associated~~
139 ~~Industries of Florida, the Florida Soft Drink Association, the~~
140 ~~Florida Petroleum Council, the Retail Grocers Association of~~

141 ~~Florida, the Florida Retail Federation, the Pulp and Paper~~
142 ~~Association, the Florida Automobile Dealers Association, the~~
143 ~~Beer Industries of Florida, the Florida Beer Wholesalers~~
144 ~~Association, and the Distilled Spirits Wholesalers.~~
145 ~~(2) As a partner working with government, business, civic,~~
146 ~~environmental, and other organizations, Keep Florida Beautiful,~~
147 ~~Incorporated, shall strive to assist the state and its local~~
148 ~~communities by contracting for the development of a highly~~
149 ~~visible antilitter campaign that, at a minimum, includes:~~
150 ~~(a) Coordinating with the Center for Marine Conservation~~
151 ~~and the Center for Solid and Hazardous Waste Management to~~
152 ~~identify components of the marine debris and litter stream and~~
153 ~~groups that habitually litter.~~
154 ~~(b) Designing appropriate advertising to promote the~~
155 ~~proper management of solid waste, with emphasis on educating~~
156 ~~groups that habitually litter.~~
157 ~~(c) Fostering public awareness and striving to build an~~
158 ~~environmental ethic in this state through the development of~~
159 ~~educational programs that result in an understanding and in~~
160 ~~action on the part of individuals and organizations about the~~
161 ~~role they must play in preventing litter and protecting~~
162 ~~Florida's environment.~~
163 ~~(d) Developing educational programs and materials that~~
164 ~~promote the proper management of solid waste, including the~~
165 ~~proper disposal of litter.~~
166 ~~(e) Administering grants provided by the state. Grants~~
167 ~~authorized under this section shall be subject to normal~~
168 ~~department audit procedures and review.~~

169 (1) ~~(3)~~ The Department of Transportation shall establish an
170 "adopt-a-highway" program to allow local organizations to be
171 identified with specific highway cleanup and highway
172 beautification projects authorized under s. 339.2405 ~~and shall~~
173 ~~coordinate such efforts with Keep Florida Beautiful, Inc~~. The
174 department shall report to the Governor and the Legislature on
175 the progress achieved and the savings incurred by the "adopt-a-
176 highway" program. The department shall also monitor and report
177 on compliance with provisions of the adopt-a-highway program to
178 ensure that organizations that participate in the program comply
179 with the goals identified by the department.
180 (2) ~~(4)~~ The Department of Transportation shall place signs
181 discouraging litter at all off-ramps of the interstate highway
182 system in the state. ~~The department shall place other highway~~
183 ~~signs as necessary to discourage littering through use of the~~
184 ~~antilitter program developed by Keep Florida Beautiful,~~
185 ~~Incorporated.~~
186 (3) ~~(5)~~ Each county is encouraged to initiate a litter
187 control and prevention program or to expand upon its existing
188 program. The department shall establish a system of grants for
189 municipalities and counties to implement litter control and
190 prevention programs. In addition to the activities described in
191 subsection (1), such grants shall at a minimum be used for
192 litter cleanup, grassroots educational programs involving litter
193 removal and prevention, and the placement of litter and
194 recycling receptacles. Counties are encouraged to form working
195 public private partnerships as authorized under this section to
196 implement litter control and prevention programs at the

197 community level. The grants authorized pursuant to this section
198 shall be incorporated as part of the recycling and education
199 grants. Counties that have a population under 100,000 ~~75,000~~ are
200 encouraged to develop a regional approach to administering and
201 coordinating their litter control and prevention programs.
202 ~~(6) The department may contract with Keep Florida~~
203 ~~Beautiful, Incorporated, to help carry out the provisions of~~
204 ~~this section. All contracts authorized under this section are~~
205 ~~subject to normal department audit procedures and review.~~
206 ~~(7) In order to establish continuity for the statewide~~
207 ~~program, those local governments and community programs~~
208 ~~receiving grants for litter prevention and control must use the~~
209 ~~official State of Florida litter control or campaign symbol~~
210 ~~adopted by Keep Florida Beautiful, Incorporated, for use on~~
211 ~~various receptacles and program material.~~
212 ~~(8) The Legislature establishes a litter reduction goal of~~
213 ~~50 percent reduction from the period January 1, 1994, to January~~
214 ~~1, 1997. The method of determination used to measure the~~
215 ~~reduction in litter is the survey conducted by the Center for~~
216 ~~Solid and Hazardous Waste Management. The center shall consider~~
217 ~~existing litter survey methodologies.~~
218 ~~(9) The Department of Environmental Protection shall~~
219 ~~contract with the Center for Solid and Hazardous Waste~~
220 ~~Management for an ongoing annual litter survey, the first of~~
221 ~~which is to be conducted by January 1, 1994. The center shall~~
222 ~~appoint a broad-based work group not to exceed seven members to~~
223 ~~assist in the development and implementation of the survey.~~
224 ~~Representatives from the university system, business,~~

225 ~~government, and the environmental community shall be considered~~
226 ~~by the center to serve on the work group. Final authority on~~
227 ~~implementing and conducting the survey rests with the center.~~
228 ~~The first survey is to be designed to serve as a baseline by~~
229 ~~measuring the amount of current litter and marine debris, and is~~
230 ~~to include a methodology for measuring the reduction in the~~
231 ~~amount of litter and marine debris to determine the progress~~
232 ~~toward the litter reduction goal established in subsection (8).~~
233 ~~Annually thereafter, additional surveys are to be conducted and~~
234 ~~must also include a methodology for measuring the reduction in~~
235 ~~the amount of litter and for determining progress toward the~~
236 ~~litter reduction goal established in subsection (8).~~
237 (4) ~~(10)~~ (a) There is created within the Department of
238 Agriculture and Consumer Services ~~within Keep Florida Beautiful,~~
239 ~~Inc.,~~ the Wildflower Advisory Council, consisting of a maximum
240 of ten ~~nine~~ members ~~to direct and oversee the expenditure of the~~
241 ~~Wildflower Account~~. The Wildflower Advisory Council shall
242 include a representative from the University of Florida
243 Institute of Food and Agricultural Sciences, the Florida
244 Department of Transportation, the Department of Agriculture and
245 Consumer Services, ~~and~~ the Florida Department of Environmental
246 Protection, the Florida League of Cities, and the Florida
247 Association of Counties. Other members of the committee may
248 include representatives from the Florida Federation of Garden
249 Clubs, Inc., Think Beauty Foundation, the Florida Chapter of the
250 American Society of Landscape Architects, Inc., and a
251 representative of the Master Gardener's Program.
252 (b) The Wildflower Advisory Council shall advise the

253 Department of Agriculture and Consumer Services and develop
254 procedures of operation, research contracts, educational and
255 marketing programs, and wildflower planting grants for Florida
256 native wildflowers, plants, and grasses. The council shall also
257 make recommendations to the department concerning ~~the final~~
258 ~~determination of~~ what constitutes acceptable species of
259 wildflowers and other plantings supported by these programs.
260 Section 3. Section 403.41315, Florida Statutes, is amended
261 to read:
262 403.41315 Comprehensive illegal dumping, litter, and
263 marine debris control and prevention.--
264 (1) The Legislature finds that a comprehensive illegal
265 dumping, litter, and marine debris control and prevention
266 program is necessary to protect the beauty and the environment
267 of Florida. The Legislature also recognizes that a comprehensive
268 illegal dumping, litter, and marine debris control and
269 prevention program will have a positive effect on the state's
270 economy. The Legislature finds that the state's rapid population
271 growth, the ever-increasing mobility of its population, and the
272 large number of tourists contribute to the need for a
273 comprehensive illegal dumping, litter, and marine debris control
274 and prevention program. The Legislature further finds that the
275 program must be coordinated and capable of having statewide
276 identity and grassroots community support.
277 (2) The comprehensive illegal dumping, litter, and marine
278 debris control and prevention program at a minimum must include
279 the following:
280 (a) A local ~~statewide~~ public awareness and educational

281 campaign~~, coordinated by Keep Florida Beautiful, Incorporated,~~
282 to educate individuals, government, businesses, and other
283 organizations concerning the role they must assume in preventing
284 and controlling litter.
285 (b) Enforcement provisions authorized under s. 403.413.
286 (c) Enforcement officers whose responsibilities include
287 grassroots education along with enforcing litter and illegal
288 dumping violations.
289 (d) Local illegal dumping, litter, and marine debris
290 control and prevention programs operated at the county level
291 with emphasis placed on grassroots educational programs designed
292 to prevent and remove litter and marine debris.
293 (e) A statewide adopt-a-highway program as authorized
294 under s. 403.4131.
295 (f) The highway beautification program authorized under s.
296 339.2405.
297 (g) A statewide Adopt-a-Shore program that includes beach,
298 river, and lake shorelines and emphasizes litter and marine
299 debris cleanup and prevention.
300 (h) The prohibition of balloon releases as authorized
301 under s. 372.995.
302 (i) The placement of approved identifiable litter and
303 recycling receptacles.
304 (j) Other educational programs that are implemented at the
305 grassroots level ~~coordinated through Keep Florida Beautiful,~~
306 ~~Inc.,~~ involving volunteers and community programs that clean up
307 and prevent litter, including Youth Conservation Corps
308 activities.

309 Section 4. Section 403.4133, Florida Statutes, is amended
310 to read:
311 403.4133 Adopt-a-Shore Program.--
312 (1) The Legislature finds that litter and illegal dumping
313 present a threat to the state's wildlife, environment, and
314 shorelines. The Legislature further finds that public awareness
315 and education will assist in preventing litter from being
316 illegally deposited along the state's shorelines.
317 (2) The Adopt-a-Shore Program shall be created within the
318 Department of Environmental Protection ~~nonprofit organization~~
319 ~~referred to in s. 403.4131(1), named Keep Florida Beautiful,~~
320 ~~Incorporated~~. The program shall be designed to educate the
321 state's citizens and visitors about the importance of litter
322 prevention and shall include approaches and techniques to remove
323 litter from the state's shorelines.
324 (3) For the purposes of this section, the term "shoreline"
325 includes, but is not limited to, beaches, rivershores, and
326 lakeshores.
327 Section 5. Subsection (28) of section 320.08058, Florida
328 Statutes, is amended to read:
329 320.08058 Specialty license plates.--
330 (28) FLORIDA WILDFLOWER LICENSE PLATES.--
331 (a) The department shall develop a Florida Wildflower
332 license plate as provided in this section. The word "Florida"
333 must appear at the top of the plate, and the words "State
334 Wildflower" and "coreopsis" must appear at the bottom of the
335 plate.
336 (b) The annual use fees shall be distributed to the

337 Department of Agriculture and Consumer Services, to be used for
338 the purposes set forth in ~~Wildflower Account established by Keep~~
339 ~~Florida Beautiful, Inc., created by~~ s. 403.4131. The proceeds
340 must be used to establish native Florida wildflower research
341 programs, wildflower educational programs, and wildflower grant
342 programs to municipal, county, and community-based groups in
343 this state. A maximum of 10 percent of the proceeds from the
344 sale of such plates may be used for administrative costs.
345 Section 6. All unexpended proceeds of fees paid for
346 Wildflower license plates which are held by Keep Florida
347 Beautiful, Inc., must be transferred to the Department of
348 Agriculture and Consumer Services promptly after the effective
349 date of this act.
350 Section 7. Section 403.703, Florida Statutes, is amended
351 to read:
352 (Substantial rewording of section. See
353 s. 403.703, F.S., for present text.)
354 403.703 Definitions.--As used in this part, the term:
355 (1) "Ash residue" has the same meaning as in the
356 department rule governing solid waste combustors which defines
357 the term.
358 (2) "Biological waste" means solid waste that causes or
359 has the capability of causing disease or infection and includes,
360 but is not limited to, biomedical waste, diseased or dead
361 animals, and other wastes capable of transmitting pathogens to
362 humans or animals. The term does not include human remains that
363 are disposed of by persons licensed under chapter 497.
364 (3) "Biomedical waste" means any solid waste or liquid

365 waste that may present a threat of infection to humans. The term
366 includes, but is not limited to, nonliquid human tissue and body
367 parts; laboratory and veterinary waste that contains human-
368 disease-causing agents; discarded disposable sharps; human blood
369 and human blood products and body fluids; and other materials
370 that in the opinion of the Department of Health represent a
371 significant risk of infection to persons outside the generating
372 facility. The term does not include human remains that are
373 disposed of by persons licensed under chapter 497.
374 (4) "Clean debris" means any solid waste that is virtually
375 inert, that is not a pollution threat to groundwater or surface
376 waters, that is not a fire hazard, and that is likely to retain
377 its physical and chemical structure under expected conditions of
378 disposal or use. The term includes uncontaminated concrete,
379 including embedded pipe or steel, brick, glass, ceramics, and
380 other wastes designated by the department.
381 (5) "Closure" means the cessation of operation of a solid
382 waste management facility and the act of securing such facility
383 so that it will pose no significant threat to human health or
384 the environment and includes long-term monitoring and
385 maintenance of a facility if required by department rule.
386 (6) "Construction and demolition debris" means discarded
387 materials generally considered to be not water-soluble and
388 nonhazardous in nature, including, but not limited to, steel,
389 glass, brick, concrete, asphalt roofing material, pipe, gypsum
390 wallboard, and lumber, from the construction or destruction of a
391 structure as part of a construction or demolition project or
392 from the renovation of a structure, and includes rocks, soils,

393 tree remains, trees, and other vegetative matter that normally
394 results from land clearing or land-development operations for a
395 construction project, including such debris from construction of
396 structures at a site remote from the construction or demolition
397 project site. Mixing of construction and demolition debris with
398 other types of solid waste will cause the resulting mixture to
399 be classified as other than construction and demolition debris.
400 The term also includes:
401 (a) Clean cardboard, paper, plastic, wood, and metal
402 scraps from a construction project.
403 (b) Except as provided in s. 403.707(9)(j), yard trash and
404 unpainted, nontreated wood scraps from sources other than
405 construction or demolition projects.
406 (c) Scrap from manufacturing facilities which is the type
407 of material generally used in construction projects and which
408 would meet the definition of construction and demolition debris
409 if it were generated as part of a construction or demolition
410 project. This includes debris from the construction of
411 manufactured homes and scrap shingles, wallboard, siding
412 concrete, and similar materials from industrial or commercial
413 facilities.
414 (d) De minimis amounts of other nonhazardous wastes that
415 are generated at construction or destruction projects, provided
416 such amounts are consistent with best management practices of
417 the industry.
418 (7) "County," or any like term, means a political
419 subdivision of the state established pursuant to s. 1, Art. VIII
420 of the State Constitution and, when s. 403.706(19) applies,

421 means a special district or other entity.
422 (8) "Department" means the Department of Environmental
423 Protection or any successor agency performing a like function.
424 (9) "Disposal" means the discharge, deposit, injection,
425 dumping, spilling, leaking, or placing of any solid waste or
426 hazardous waste into or upon any land or water so that such
427 solid waste or hazardous waste or any constituent thereof may
428 enter other lands or be emitted into the air or discharged into
429 any waters, including groundwaters, or otherwise enter the
430 environment.
431 (10) "Generation" means the act or process of producing
432 solid or hazardous waste.
433 (11) "Guarantor" means any person, other than the owner or
434 operator, who provides evidence of financial responsibility for
435 an owner or operator under this part.
436 (12) "Hazardous substance" means any substance that is
437 defined as a hazardous substance in the United States
438 Comprehensive Environmental Response, Compensation, and
439 Liability Act of 1980, 94 Stat. 2767.
440 (13) "Hazardous waste" means solid waste, or a combination
441 of solid wastes, which, because of its quantity, concentration,
442 or physical, chemical, or infectious characteristics, may cause,
443 or significantly contribute to, an increase in mortality or an
444 increase in serious irreversible or incapacitating reversible
445 illness or may pose a substantial present or potential hazard to
446 human health or the environment when improperly transported,
447 disposed of, stored, treated, or otherwise managed. The term
448 does not include human remains that are disposed of by persons

449 licensed under chapter 497.
450 (14) "Hazardous waste facility" means any building, site,
451 structure, or equipment at or by which hazardous waste is
452 disposed of, stored, or treated.
453 (15) "Hazardous waste management" means the systematic
454 control of the collection, source separation, storage,
455 transportation, processing, treatment, recovery, recycling, and
456 disposal of hazardous wastes.
457 (16) "Land disposal" means any placement of hazardous
458 waste in or on the land and includes, but is not limited to,
459 placement in a landfill, surface impoundment, waste pile,
460 injection well, land treatment facility, salt bed formation,
461 salt dome formation, or underground mine or cave, or placement
462 in a concrete vault or bunker intended for disposal purposes.
463 (17) "Landfill" means any solid waste land disposal area
464 for which a permit, other than a general permit, is required by
465 s. 403.707 and which receives solid waste for disposal in or
466 upon land. The term does not include a landspreading site, an
467 injection well, a surface impoundment, or a facility for the
468 disposal of construction and demolition debris.
469 (18) "Manifest" means the recordkeeping system used for
470 identifying the concentration, quantity, composition, origin,
471 routing, and destination of hazardous waste during its
472 transportation from the point of generation to the point of
473 disposal, storage, or treatment.
474 (19) "Materials recovery facility" means a solid waste
475 management facility that provides for the extraction from solid
476 waste of recyclable materials, materials suitable for use as a

477 fuel or soil amendment, or any combination of such materials.
478 (20) "Municipality," or any like term, means a
479 municipality created pursuant to general or special law
480 authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of
481 the State Constitution and, when s. 403.706(19) applies, means a
482 special district or other entity.
483 (21) "Operation," with respect to any solid waste
484 management facility, means the disposal, storage, or processing
485 of solid waste at and by the facility.
486 (22) "Person" means any and all persons, natural or
487 artificial, including any individual, firm, or association; any
488 municipal or private corporation organized or existing under the
489 laws of this state or any other state; any county of this state;
490 and any governmental agency of this state or the Federal
491 Government.
492 (23) "Processing" means any technique designed to change
493 the physical, chemical, or biological character or composition
494 of any solid waste so as to render it safe for transport;
495 amenable to recovery, storage, or recycling; safe for disposal;
496 or reduced in volume or concentration.
497 (24) "Recovered materials" means metal, paper, glass,
498 plastic, textile, or rubber materials that have known recycling
499 potential, can be feasibly recycled, and have been diverted and
500 source separated or have been removed from the solid waste
501 stream for sale, use, or reuse as raw materials, whether or not
502 the materials require subsequent processing or separation from
503 each other, but the term does not include materials destined for
504 any use that constitutes disposal. Recovered materials as

505 described in this subsection are not solid waste.
506 (25) "Recovered materials processing facility" means a
507 facility engaged solely in the storage, processing, resale, or
508 reuse of recovered materials. Such a facility is not a solid
509 waste management facility if it meets the conditions of s.
510 403.7045(1)(e).
511 (26) "Recyclable material" means those materials that are
512 capable of being recycled and that would otherwise be processed
513 or disposed of as solid waste.
514 (27) "Recycling" means any process by which solid waste,
515 or materials that would otherwise become solid waste, are
516 collected, separated, or processed and reused or returned to use
517 in the form of raw materials or products.
518 (28) "Resource recovery" means the process of recovering
519 materials or energy from solid waste, excluding those materials
520 or solid waste under the control of the Nuclear Regulatory
521 Commission.
522 (29) "Resource recovery equipment" means equipment or
523 machinery exclusively and integrally used in the actual process
524 of recovering material or energy resources from solid waste.
525 (30) "Sludge" includes the accumulated solids, residues,
526 and precipitates generated as a result of waste treatment or
527 processing, including wastewater treatment, water-supply
528 treatment, or operation of an air pollution control facility,
529 and mixed liquids and solids pumped from septic tanks, grease
530 traps, privies, or similar waste disposal appurtenances.
531 (31) "Solid waste" means sludge unregulated under the
532 federal Clean Water Act or Clean Air Act, sludge from a waste

533 treatment works, water supply treatment plant, or air pollution
534 control facility, or garbage, rubbish, refuse, special waste, or
535 other discarded material, including solid, liquid, semisolid, or
536 contained gaseous material resulting from domestic, industrial,
537 commercial, mining, agricultural, or governmental operations.
538 Recovered materials as defined in subsection (24) are not solid
539 waste.
540 (32) "Solid waste disposal facility" means any solid waste
541 management facility that is the final resting place for solid
542 waste, including landfills and incineration facilities that
543 produce ash from the process of incinerating municipal solid
544 waste.
545 (33) "Solid waste management" means the process by which
546 solid waste is collected, transported, stored, separated,
547 processed, or disposed of in any other way according to an
548 orderly, purposeful, and planned program, which includes
549 closure.
550 (34) "Solid waste management facility" means any solid
551 waste disposal area, volume-reduction plant, transfer station,
552 materials recovery facility, or other facility, the purpose of
553 which is resource recovery or the disposal, recycling,
554 processing, or storage of solid waste. The term does not include
555 recovered materials processing facilities that meet the
556 requirements of s. 403.7046, except the portion of such
557 facilities, if any, which is used for the management of solid
558 waste.
559 (35) "Source separated" means that the recovered materials
560 are separated from solid waste at the location where the

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

589 (40) "Treatment," when used in connection with hazardous
590 waste, means any method, technique, or process, including
591 neutralization, which is designed to change the physical,
592 chemical, or biological character or composition of any
593 hazardous waste so as to neutralize it or render it
594 nonhazardous, safe for transport, amenable to recovery, amenable
595 to storage or disposal, or reduced in volume or concentration.
596 The term includes any activity or processing that is designed to
597 change the physical form or chemical composition of hazardous
598 waste so as to render it nonhazardous.
599 (41) "Volume reduction plant" includes incinerators,
600 pulverizers, compactors, shredding and baling plants, composting
601 plants, and other plants that accept and process solid waste for
602 recycling or disposal.
603 (42) "White goods" includes inoperative and discarded
604 refrigerators, ranges, water heaters, freezers, and other
605 similar domestic and commercial large appliances.
606 (43) "Yard trash" means vegetative matter resulting from
607 landscaping maintenance and land clearing operations and
608 includes associated rocks and soils.
609 Section 8. Subsection (69) of section 316.003, Florida
610 Statutes, is amended to read:
611 316.003 Definitions.--The following words and phrases,
612 when used in this chapter, shall have the meanings respectively
613 ascribed to them in this section, except where the context
614 otherwise requires:
615 (69) HAZARDOUS MATERIAL.--Any substance or material which
616 has been determined by the secretary of the United States

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

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

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

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

729 ~~site if it is affirmatively demonstrated by the department that~~
730 ~~a significant change in the initial quality of the water has~~
731 ~~occurred in the downstream monitoring well which adversely~~
732 ~~affects the beneficial uses of the water. These wells may be~~
733 ~~public or private water supply wells if they are suitable for~~
734 ~~use in determining background water quality levels.~~
735 (9) ~~(15)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54
736 to implement and enforce the provisions of this act, including
737 requirements for the classification, construction, operation,
738 maintenance, and closure of solid waste management facilities
739 and requirements for, and conditions on, solid waste disposal in
740 this state, whether such solid waste is generated within this
741 state or outside this state as long as such requirements and
742 conditions are not based on the out-of-state origin of the waste
743 and are consistent with applicable provisions of law. When
744 classifying solid waste management facilities, the department
745 shall consider the hydrogeology of the site for the facility,
746 the types of wastes to be handled by the facility, and methods
747 used to control the types of waste to be handled by the facility
748 and shall seek to minimize the adverse effects of solid waste
749 management on the environment. Whenever the department adopts
750 any rule stricter or more stringent than one which has been set
751 by the United States Environmental Protection Agency, the
752 procedures set forth in s. 403.804(2) shall be followed. The
753 department shall not, however, adopt hazardous waste rules for
754 solid waste for which special studies were required prior to
755 October 1, 1988, under s. 8002 of the Resource Conservation and
756 Recovery Act, 42 U.S.C. s. 6982, as amended, until the studies

757 are completed by the United States Environmental Protection
758 Agency and the information is available to the department for
759 consideration in adopting its own rule.
760 (10) ~~(16)~~ Issue or modify permits on such conditions as are
761 necessary to effect the intent and purposes of this act, and may
762 deny or revoke permits.
763 ~~(17) Conduct research, using the State University System,~~
764 ~~solid waste professionals from local governments, private~~
765 ~~enterprise, and other organizations, on alternative,~~
766 ~~economically feasible, cost-effective, and environmentally safe~~
767 ~~solid waste management and landfill closure methods which~~
768 ~~protect the health, safety, and welfare of the public and the~~
769 ~~environment and which may assist in developing markets and~~
770 ~~provide economic benefits to local governments, the state, and~~
771 ~~its citizens, and solicit public participation during the~~
772 ~~research process. The department shall incorporate such cost-~~
773 ~~effective landfill closure methods in the appropriate department~~
774 ~~rule as alternative closure requirements.~~
775 (11) ~~(18)~~ Develop and implement or contract for services to
776 develop information on recovered materials markets and
777 strategies for market development and expansion for use of these
778 materials. Additionally, the department shall maintain a
779 directory of recycling businesses operating in the state and
780 shall serve as a coordinator to match recovered materials with
781 markets. Such directory shall be made available to the public
782 and to local governments to assist with their solid waste
783 management activities.
784 ~~(19) Authorize variances from solid waste closure rules~~

785 ~~adopted pursuant to this part, provided such variances are~~
786 ~~applied for and approved in accordance with s. 403.201 and will~~
787 ~~not result in significant threats to human health or the~~
788 ~~environment.~~
789 (12) ~~(20)~~ Establish accounts and deposit to the Solid Waste
790 Management Trust Fund and control and administer moneys it may
791 withdraw from the fund.
792 (13) ~~(21)~~ Manage a program of grants, using funds from the
793 Solid Waste Management Trust Fund and funds provided by the
794 Legislature for solid waste management, for programs for
795 recycling, composting, litter control, and special waste
796 management and for programs which provide for the safe and
797 proper management of solid waste.
798 (14) ~~(22)~~ Budget and receive appropriated funds and accept,
799 receive, and administer grants or other funds or gifts from
800 public or private agencies, including the state and the Federal
801 Government, for the purpose of carrying out the provisions of
802 this act.
803 (15) ~~(23)~~ Delegate its powers, enter into contracts, or
804 take such other actions as may be necessary to implement this
805 act.
806 (16) ~~(24)~~ Receive and administer funds appropriated for
807 county hazardous waste management assessments.
808 (17) ~~(25)~~ Provide technical assistance to local governments
809 and regional agencies to ensure consistency between county
810 hazardous waste management assessments; coordinate the
811 development of such assessments with the assistance of the
812 appropriate regional planning councils; and review and make

813 recommendations to the Legislature relative to the sufficiency
814 of the assessments to meet state hazardous waste management
815 needs.
816 (18) ~~(26)~~ Increase public education and public awareness of
817 solid and hazardous waste issues by developing and promoting
818 statewide programs of litter control, recycling, volume
819 reduction, and proper methods of solid waste and hazardous waste
820 management.
821 (19) ~~(27)~~ Assist the hazardous waste storage, treatment, or
822 disposal industry by providing to the industry any data produced
823 on the types and quantities of hazardous waste generated.
824 (20) ~~(28)~~ Institute a hazardous waste emergency response
825 program which would include emergency telecommunication
826 capabilities and coordination with appropriate agencies.
827 (21) ~~(29)~~ Promulgate rules necessary to accept delegation
828 of the hazardous waste management program from the Environmental
829 Protection Agency under the Hazardous and Solid Waste Amendments
830 of 1984, Pub. L. No. 98-616.
831 (22) ~~(30)~~ Adopt rules, if necessary, to address the
832 incineration and disposal of biomedical waste and the management
833 of biological waste within the state, whether such waste is
834 generated within this state or outside this state, as long as
835 such requirements and conditions are not based on the out-of-
836 state origin of the waste and are consistent with applicable
837 provisions of law.
838 Section 12. Section 403.7043, Florida Statutes, is amended
839 to read:
840 403.7043 Compost standards and applications.--

841 (1) In order to protect the state's land and water
842 resources, compost produced, utilized, or disposed of by the
843 composting process at solid waste management facilities in the
844 state must meet criteria established by the department.
845 (2) The department shall ~~Within 6 months after October 1,~~
846 ~~1988, the department shall initiate rulemaking to~~ establish and
847 maintain rules addressing standards for the production of
848 compost ~~and shall complete and promulgate those rules within 12~~
849 ~~months after initiating the process of rulemaking~~, including
850 rules establishing:
851 (a) Requirements necessary to produce hygienically safe
852 compost products for varying applications.
853 (b) A classification scheme for compost based on~~:~~ the
854 types of waste composted, ~~including at least one type containing~~
855 ~~only yard trash;~~ the maturity of the compost, ~~including at least~~
856 ~~three degrees of decomposition for fresh, semimature, and~~
857 ~~mature;~~ and the levels of organic and inorganic constituents in
858 the compost. This scheme shall address:
859 1. Methods for measurement of the compost maturity.
860 2. Particle sizes.
861 3. Moisture content.
862 4. Average levels of organic and inorganic constituents,
863 including heavy metals, for such classes of compost as the
864 department establishes, and the analytical methods to determine
865 those levels.
866 ~~(3) Within 6 months after October 1, 1988, the department~~
867 ~~shall initiate rulemaking to prescribe the allowable uses and~~
868 ~~application rates of compost and shall complete and promulgate~~

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

897 sewage effluent or irrigation return flows or other discharges
898 which are point sources subject to permits pursuant to
899 provisions of this chapter or pursuant to s. 402 of the Clean
900 Water Act, Pub. L. No. 95-217;
901 (c) Emissions to the air from a stationary installation or
902 source regulated under provisions of this chapter or under the
903 Clean Air Act, Pub. L. No. 95-95;
904 (d) Drilling fluids, produced waters, and other wastes
905 associated with the exploration for, or development and
906 production of, crude oil or natural gas which are regulated
907 under chapter 377; or
908 (e) Recovered materials or recovered materials processing
909 facilities shall not be regulated pursuant to this act, except
910 as provided in s. 403.7046, if:
911 1. A majority of the recovered materials at the facility
912 are demonstrated to be sold, used, or reused within 1 year.
913 2. The recovered materials handled by the facility or the
914 products or byproducts of operations that process recovered
915 materials are not discharged, deposited, injected, dumped,
916 spilled, leaked, or placed into or upon any land or water by the
917 owner or operator of such facility so that such recovered
918 materials, products or byproducts, or any constituent thereof
919 may enter other lands or be emitted into the air or discharged
920 into any waters, including groundwaters, or otherwise enter the
921 environment such that a threat of contamination in excess of
922 applicable department standards and criteria is caused.
923 3. The recovered materials handled by the facility are not
924 hazardous wastes as defined under s. 403.703, and rules

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

953 (3) The following wastes or activities shall be regulated
954 pursuant to this act in the following manner:
955 (a) Dredged material that is generated as part of a
956 project permitted under part IV of chapter 373 or chapter 161,
957 or that is authorized to be removed from sovereign submerged
958 lands under chapter 253, ~~Dredge spoil or fill material~~ shall be
959 managed in accordance with the conditions of that permit or
960 authorization unless the dredged material is regulated as
961 hazardous waste pursuant to this part ~~disposed of pursuant to a~~
962 ~~dredge and fill permit, but whenever hazardous components are~~
963 ~~disposed of within the dredge or fill material, the dredge and~~
964 ~~fill permits shall specify the specific hazardous wastes~~
965 ~~contained and the concentration of each such waste~~. If the
966 dredged material contains hazardous substances, the department
967 may further ~~then~~ limit or restrict the sale or use of the
968 dredged ~~dredge and fill~~ material and may specify such other
969 conditions relative to this material as are reasonably necessary
970 to protect the public from the potential hazards.
971 (b) Hazardous wastes that ~~which~~ are contained in
972 artificial recharge waters or other waters intentionally
973 introduced into any underground formation and that ~~which~~ are
974 permitted pursuant to s. 373.106 shall also be handled in
975 compliance with the requirements and standards for disposal,
976 storage, and treatment of hazardous waste under this act.
977 (c) Solid waste or hazardous waste facilities that ~~which~~
978 are operated as a part of the normal operation of a power
979 generating facility and which are licensed by certification
980 pursuant to the Florida Electrical Power Plant Siting Act, ss.

981 403.501-403.518, shall undergo such certification subject to the
982 substantive provisions of this act.
983 (d) Biomedical waste and biological waste shall be
984 disposed of only as authorized by the department. However, any
985 person who unknowingly disposes into a sanitary landfill or
986 waste-to-energy facility any such waste that ~~which~~ has not been
987 properly segregated or separated from other solid wastes by the
988 generating facility is not guilty of a violation under this act.
989 ~~Nothing in~~ This paragraph does not ~~shall be construed to~~
990 prohibit the department from seeking injunctive relief pursuant
991 to s. 403.131 to prohibit the unauthorized disposal of
992 biomedical waste or biological waste.
993 Section 14. Section 403.707, Florida Statutes, is amended
994 to read:
995 403.707 Permits.--
996 (1) A ~~No~~ solid waste management facility may not be
997 operated, maintained, constructed, expanded, modified, or closed
998 without an appropriate and currently valid permit issued by the
999 department. The department may, by rule, exempt specified types
1000 of facilities from the requirement for a permit if it determines
1001 that construction for operation of the facility is not expected
1002 to create any significant threat to the environment or public
1003 health. For purposes of this part, and only when specified by
1004 department rule, a permit may include registrations as well as
1005 other forms of licenses as defined in s. 120.52. Solid waste
1006 construction permits issued under this section may include any
1007 permit conditions necessary to achieve compliance with the
1008 recycling requirements of this act. The department shall pursue

1009 reasonable timeframes for closure and construction requirements,
1010 considering pending federal requirements and implementation
1011 costs to the permittee. The department shall adopt a rule
1012 establishing performance standards for construction and closure
1013 of solid waste management facilities. The standards shall allow
1014 flexibility in design and consideration for site-specific
1015 characteristics.
1016 (2) Except as provided in s. 403.722(6), no permit under
1017 this section is required for the following, provided that the
1018 activity shall not create a public nuisance or any condition
1019 adversely affecting the environment or public health and shall
1020 not violate other state or local laws, ordinances, rules,
1021 regulations, or orders:
1022 (a) Disposal by persons of solid waste resulting from
1023 their own activities on their own property, provided such waste
1024 is either ordinary household waste from their residential
1025 property or is rocks, soils, trees, tree remains, and other
1026 vegetative matter that ~~which~~ normally result from land
1027 development operations. Disposal of materials that ~~which~~ could
1028 create a public nuisance or adversely affect the environment or
1029 public health, such as: white goods; automotive materials, such
1030 as batteries and tires; petroleum products; pesticides;
1031 solvents; or hazardous substances, is not covered under this
1032 exemption.
1033 (b) Storage in containers by persons of solid waste
1034 resulting from their own activities on their property, leased or
1035 rented property, or property subject to a homeowners or
1036 maintenance association for which the person contributes

1037 association assessments, if the solid waste in such containers
1038 is collected at least once a week.
1039 (c) Disposal by persons of solid waste resulting from
1040 their own activities on their property, provided the
1041 environmental effects of such disposal on groundwater and
1042 surface waters are:
1043 1. Addressed or authorized by a site certification order
1044 issued under part II or a permit issued by the department
1045 pursuant to this chapter or rules adopted pursuant thereto; or
1046 2. Addressed or authorized by, or exempted from the
1047 requirement to obtain, a groundwater monitoring plan approved by
1048 the department.
1049 (d) Disposal by persons of solid waste resulting from
1050 their own activities on their own property, provided that such
1051 disposal occurred prior to October 1, 1988.
1052 (e) Disposal of solid waste resulting from normal farming
1053 operations as defined by department rule. Polyethylene
1054 agricultural plastic, damaged, nonsalvageable, untreated wood
1055 pallets, and packing material that cannot be feasibly recycled,
1056 which are used in connection with agricultural operations
1057 related to the growing, harvesting, or maintenance of crops, may
1058 be disposed of by open burning, provided that no public nuisance
1059 or any condition adversely affecting the environment or the
1060 public health is created thereby and that state or federal
1061 ambient air quality standards are not violated.
1062 (f) The use of clean debris as fill material in any area.
1063 However, this paragraph does not exempt any person from
1064 obtaining any other required permits, nor does it affect a

1065 person's responsibility to dispose of clean debris appropriately
1066 if it is not to be used as fill material.
1067 (g) Compost operations that produce less than 50 cubic
1068 yards of compost per year when the compost produced is used on
1069 the property where the compost operation is located.
1070 (3) All applicable provisions of ss. 403.087 and 403.088,
1071 relating to permits, apply to the control of solid waste
1072 management facilities.
1073 (4) When application for a construction permit for a Class
1074 I ~~or Class II~~ solid waste disposal area is made, it is the duty
1075 of the department to provide a copy of the application, within 7
1076 days after filing, to the water management district having
1077 jurisdiction where the area is to be located. The water
1078 management district may prepare an advisory report as to the
1079 impact on water resources. This report shall contain the
1080 district's recommendations as to the disposition of the
1081 application and shall be submitted to the department no later
1082 than 30 days prior to the deadline for final agency action by
1083 the department. However, the failure of the department or the
1084 water management district to comply with the provisions of this
1085 subsection shall not be the basis for the denial, revocation, or
1086 remand of any permit or order issued by the department.
1087 (5) The department may not issue a construction permit
1088 pursuant to this part for a new solid waste landfill within
1089 3,000 feet of Class I surface waters.
1090 (6) The department may issue a construction permit
1091 pursuant to this part only to a solid waste management facility
1092 that provides the conditions necessary to control the safe

1093 movement of wastes or waste constituents into surface or ground
1094 waters or the atmosphere and that will be operated, maintained,
1095 and closed by qualified and properly trained personnel. Such
1096 facility must if necessary:
1097 (a) Use natural or artificial barriers which are capable
1098 of controlling lateral or vertical movement of wastes or waste
1099 constituents into surface or ground waters.
1100 (b) Have a foundation or base that is capable of providing
1101 support for structures and waste deposits and capable of
1102 preventing foundation or base failure due to settlement,
1103 compression, or uplift.
1104 (c) Provide for the most economically feasible, cost-
1105 effective, and environmentally safe control of leachate, gas,
1106 stormwater, and disease vectors and prevent the endangerment of
1107 public health and the environment.
1108
1109 Open fires, air-curtain incinerators, or trench burning may not
1110 be used as a means of disposal at a solid waste management
1111 facility, unless permitted by the department under s. 403.087.
1112 (7) Prior to application for a construction permit, an
1113 applicant shall designate to the department temporary backup
1114 disposal areas or processes for the resource recovery facility.
1115 Failure to designate temporary backup disposal areas or
1116 processes shall result in a denial of the construction permit.
1117 (8) The department may refuse to issue a permit to an
1118 applicant who by past conduct in this state has repeatedly
1119 violated pertinent statutes, rules, or orders or permit terms or
1120 conditions relating to any solid waste management facility and

1121 who is deemed to be irresponsible as defined by department rule.
1122 For the purposes of this subsection, an applicant includes the
1123 owner or operator of the facility, or if the owner or operator
1124 is a business entity, a parent of a subsidiary corporation, a
1125 partner, a corporate officer or director, or a stockholder
1126 holding more than 50 percent of the stock of the corporation.
1127 ~~(9) Before or on the same day of filing with the~~
1128 ~~department of an application for any construction permit for the~~
1129 ~~incineration of biomedical waste which the department may~~
1130 ~~require by rule, the applicant shall notify each city and county~~
1131 ~~within 1 mile of the facility of the filing of the application~~
1132 ~~and shall publish notice of the filing of the application. The~~
1133 ~~applicant shall publish a second notice of the filing within 14~~
1134 ~~days after the date of filing. Each notice shall be published in~~
1135 ~~a newspaper of general circulation in the county in which the~~
1136 ~~facility is located or is proposed to be located.~~
1137 ~~Notwithstanding the provisions of chapter 50, for purposes of~~
1138 ~~this section, a "newspaper of general circulation" shall be the~~
1139 ~~newspaper within the county in which the installation or~~
1140 ~~facility is proposed which has the largest daily circulation in~~
1141 ~~that county and has its principal office in that county. If the~~
1142 ~~newspaper with the largest daily circulation has its principal~~
1143 ~~office outside the county, the notice shall appear in both the~~
1144 ~~newspaper with the largest daily circulation in that county, and~~
1145 ~~a newspaper authorized to publish legal notices in that county.~~
1146 ~~The notice shall contain:~~
1147 ~~(a) The name of the applicant and a brief description of~~
1148 ~~the facility and its location.~~

1149 ~~(b) The location of the application file and when it is~~
1150 ~~available for public inspection.~~
1151
1152 ~~The notice shall be prepared by the applicant and shall comply~~
1153 ~~with the following format:~~
1154
1155 ~~Notice of Application~~
1156
1157 ~~The Department of Environmental Protection announces receipt of~~
1158 ~~an application for a permit from (name of applicant) to (brief~~
1159 ~~description of project). This proposed project will be located~~
1160 ~~at (location) in (county) (city).~~
1161
1162 ~~This application is being processed and is available for public~~
1163 ~~inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,~~
1164 ~~Monday through Friday, except legal holidays, at (name and~~
1165 ~~address of office).~~
1166
1167 ~~(10) A permit, which the department may require by rule,~~
1168 ~~for the incineration of biomedical waste, may not be transferred~~
1169 ~~by the permittee to any other entity, except in conformity with~~
1170 ~~the requirements of this subsection.~~
1171 ~~(a) Within 30 days after the sale or legal transfer of a~~
1172 ~~permitted facility, the permittee shall file with the department~~
1173 ~~an application for transfer of the permits on such form as the~~
1174 ~~department shall establish by rule. The form must be completed~~
1175 ~~with the notarized signatures of both the transferring permittee~~
1176 ~~and the proposed permittee.~~

1177 ~~(b) The department shall approve the transfer of a permit~~
1178 ~~unless it determines that the proposed permittee has not~~
1179 ~~provided reasonable assurances that the proposed permittee has~~
1180 ~~the administrative, technical, and financial capability to~~
1181 ~~properly satisfy the requirements and conditions of the permit,~~
1182 ~~as determined by department rule. The determination shall be~~
1183 ~~limited solely to the ability of the proposed permittee to~~
1184 ~~comply with the conditions of the existing permit, and it shall~~
1185 ~~not concern the adequacy of the permit conditions. If the~~
1186 ~~department proposes to deny the transfer, it shall provide both~~
1187 ~~the transferring permittee and the proposed permittee a written~~
1188 ~~objection to such transfer together with notice of a right to~~
1189 ~~request a proceeding on such determination under chapter 120.~~
1190 ~~(c) Within 90 days after receiving a properly completed~~
1191 ~~application for transfer of a permit, the department shall issue~~
1192 ~~a final determination. The department may toll the time for~~
1193 ~~making a determination on the transfer by notifying both the~~
1194 ~~transferring permittee and the proposed permittee that~~
1195 ~~additional information is required to adequately review the~~
1196 ~~transfer request. Such notification shall be provided within 30~~
1197 ~~days after receipt of an application for transfer of the permit,~~
1198 ~~completed pursuant to paragraph (a). If the department fails to~~
1199 ~~take action to approve or deny the transfer within 90 days after~~
1200 ~~receipt of the completed application or within 90 days after~~
1201 ~~receipt of the last item of timely requested additional~~
1202 ~~information, the transfer shall be deemed approved.~~
1203 ~~(d) The transferring permittee is encouraged to apply for~~
1204 ~~a permit transfer well in advance of the sale or legal transfer~~

1205 ~~of a permitted facility. However, the transfer of the permit~~
1206 ~~shall not be effective prior to the sale or legal transfer of~~
1207 ~~the facility.~~
1208 ~~(c) Until the transfer of the permit is approved by the~~
1209 ~~department, the transferring permittee and any other person~~
1210 ~~constructing, operating, or maintaining the permitted facility~~
1211 ~~shall be liable for compliance with the terms of the permit.~~
1212 ~~Nothing in this section shall relieve the transferring permittee~~
1213 ~~of liability for corrective actions that may be required as a~~
1214 ~~result of any violations occurring prior to the legal transfer~~
1215 ~~of the permit.~~
1216 ~~(11) The department shall review all permit applications~~
1217 ~~for any designated Class I solid waste disposal facility. As~~
1218 ~~used in this subsection, the term "designated Class I solid~~
1219 ~~waste disposal facility" means any facility that is, as of May~~
1220 ~~12, 1993, a solid waste disposal facility classified as an~~
1221 ~~active Class I landfill by the department, that is located in~~
1222 ~~whole or in part within 1,000 feet of the boundary of any~~
1223 ~~municipality, but that is not located within any county with an~~
1224 ~~approved charter or consolidated municipal government, is not~~
1225 ~~located within any municipality, and is not operated by a~~
1226 ~~municipality. The department shall not permit vertical expansion~~
1227 ~~or horizontal expansion of any designated Class I solid waste~~
1228 ~~disposal facility unless the application for such permit was~~
1229 ~~filed before January 1, 1993, and no solid waste management~~
1230 ~~facility may be operated which is a vertical expansion or~~
1231 ~~horizontal expansion of a designated Class I solid waste~~
1232 ~~disposal facility. As used in this subsection, the term~~

1233 ~~"vertical expansion" means any activity that will result in an~~
1234 ~~increase in the height of a designated Class I solid waste~~
1235 ~~disposal facility above 100 feet National Geodetic Vertical~~
1236 ~~Datum, except solely for closure, and the term "horizontal~~
1237 ~~expansion" means any activity that will result in an increase in~~
1238 ~~the ground area covered by a designated Class I solid waste~~
1239 ~~disposal facility, or if within 1 mile of a designated Class I~~
1240 ~~solid waste disposal facility, any new or expanded operation of~~
1241 ~~any solid waste disposal facility or area, or of incineration of~~
1242 ~~solid waste, or of storage of solid waste for more than 1 year,~~
1243 ~~or of composting of solid waste other than yard trash.~~
1244 (9) ~~(12)~~ The department shall establish a separate category
1245 for solid waste management facilities which accept only
1246 construction and demolition debris for disposal or recycling.
1247 The department shall establish a reasonable schedule for
1248 existing facilities to comply with this section to avoid undue
1249 hardship to such facilities. However, a permitted solid waste
1250 disposal unit that ~~which~~ receives a significant amount of waste
1251 prior to the compliance deadline established in this schedule
1252 shall not be required to be retrofitted with liners or leachate
1253 control systems. Facilities accepting materials defined in s.
1254 403.703(6)(b) ~~s. 403.703(17)(b)~~ must implement a groundwater
1255 monitoring system adequate to detect contaminants that may
1256 reasonably be expected to result from such disposal prior to the
1257 acceptance of those materials.
1258 (a) The department shall establish reasonable
1259 construction, operation, monitoring, recordkeeping, financial
1260 assurance, and closure requirements for such facilities. The

1261 department shall take into account the nature of the waste
1262 accepted at various facilities when establishing these
1263 requirements, and may impose less stringent requirements,
1264 including a system of general permits or registration
1265 requirements, for facilities that accept only a segregated waste
1266 stream which is expected to pose a minimal risk to the
1267 environment and public health, such as clean debris. The
1268 Legislature recognizes that incidental amounts of other types of
1269 solid waste are commonly generated at construction or demolition
1270 projects. In any enforcement action taken pursuant to this
1271 section, the department shall consider the difficulty of
1272 removing these incidental amounts from the waste stream.
1273 (b) The department shall not require liners and leachate
1274 collection systems at individual facilities unless it
1275 demonstrates, based upon the types of waste received, the
1276 methods for controlling types of waste disposed of, the
1277 proximity of groundwater and surface water, and the results of
1278 the hydrogeological and geotechnical investigations, that the
1279 facility is reasonably expected to result in violations of
1280 groundwater standards and criteria otherwise.
1281 (c) The owner or operator shall provide financial
1282 assurance for closing of the facility in accordance with the
1283 requirements of s. 403.7125. The financial assurance shall cover
1284 the cost of closing the facility and 5 years of long-term care
1285 after closing, unless the department determines, based upon
1286 hydrogeologic conditions, the types of wastes received, or the
1287 groundwater monitoring results, that a different long-term care
1288 period is appropriate. However, unless the owner or operator of

1289 the facility is a local government, the escrow account described
1290 in s. 403.7125(2) ~~s. 403.7125(3)~~ may not be used as a financial
1291 assurance mechanism.
1292 (d) The department shall establish training requirements
1293 for operators of facilities, and shall work with the State
1294 University System or other providers to assure that adequate
1295 training courses are available. The department shall also assist
1296 the Florida Home Builders Association in establishing a
1297 component of its continuing education program to address proper
1298 handling of construction and demolition debris, including best
1299 management practices for reducing contamination of the
1300 construction and demolition debris waste stream.
1301 (e) The issuance of a permit under this subsection does
1302 not obviate the need to comply with all applicable zoning and
1303 land use regulations.
1304 (f) A permit is not required under this section for the
1305 disposal of construction and demolition debris on the property
1306 where it is generated, but such property must be covered,
1307 graded, and vegetated as necessary when disposal is complete.
1308 (g) It is the policy of the Legislature to encourage
1309 facilities to recycle. The department shall establish criteria
1310 and guidelines that encourage recycling where practical and
1311 provide for the use of recycled materials in a manner that
1312 protects the public health and the environment. Facilities are
1313 authorized to recycle, provided such activities do not conflict
1314 with such criteria and guidelines.
1315 (h) The department shall ensure that the requirements of
1316 this section are applied and interpreted consistently throughout

1317 the state. In accordance with s. 20.255, the Division of Waste
1318 Management shall direct the district offices and bureaus on
1319 matters relating to the interpretation and applicability of this
1320 section.
1321 (i) The department shall provide notice of receipt of a
1322 permit application for the initial construction of a
1323 construction and demolition debris disposal facility to the
1324 local governments having jurisdiction where the facility is to
1325 be located.
1326 (j) The Legislature recognizes that recycling, waste
1327 reduction, and resource recovery are important aspects of an
1328 integrated solid waste management program and as such are
1329 necessary to protect the public health and the environment. If
1330 necessary to promote such an integrated program, the county may
1331 determine, after providing notice and an opportunity for a
1332 hearing prior to December 31, 2006 ~~1996~~, that some or all of the
1333 wood material described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~
1334 shall be excluded from the definition of "construction and
1335 demolition debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the
1336 jurisdiction of such county. The county may make such a
1337 determination only if it finds that, prior to June 1, 2006 ~~1996~~,
1338 the county has established an adequate method for the use or
1339 recycling of such wood material at an existing or proposed solid
1340 waste management facility that is permitted or authorized by the
1341 department on June 1, 2006 ~~1996~~. The county shall not be
1342 required to hold a hearing if the county represents that it
1343 previously has held a hearing for such purpose, nor shall the
1344 county be required to hold a hearing if the county represents

1345 that it previously has held a public meeting or hearing that
1346 authorized such method for the use or recycling of trash or
1347 other nonputrescible waste materials and if the county further
1348 represents that such materials include those materials described
1349 in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~. The county shall provide
1350 written notice of its determination to the department by no
1351 later than December 31, 2006 ~~1996~~; thereafter, the wood
1352 materials described in s. 403.703(6)(b) ~~s. 403.703(17)(b)~~ shall
1353 be excluded from the definition of "construction and demolition
1354 debris" in s. 403.703(6) ~~s. 403.703(17)~~ within the jurisdiction
1355 of such county. The county may withdraw or revoke its
1356 determination at any time by providing written notice to the
1357 department.
1358 (k) Brazilian pepper and other invasive exotic plant
1359 species as designated by the department resulting from
1360 eradication projects may be processed at permitted construction
1361 and demolition debris recycling facilities or disposed of at
1362 permitted construction and demolition debris disposal facilities
1363 or Class III facilities. The department may adopt rules to
1364 implement this paragraph.
1365 (10) ~~(13)~~ If the department and a local government
1366 independently require financial assurance for the closure of a
1367 privately owned solid waste management facility, the department
1368 and that local government shall enter into an interagency
1369 agreement that will allow the owner or operator to provide a
1370 single financial mechanism to cover the costs of closure ~~and any~~
1371 ~~required long-term care~~. The financial mechanism may provide for
1372 the department and local government to be cobeneficiaries or

1373 copayees, but shall not impose duplicative financial
1374 requirements on the owner or operator. These closure costs must
1375 include at least the minimum required by department rules and
1376 must also include any additional costs required by local
1377 ordinance or regulation.
1378 (11) ~~(14)~~ Before or on the same day of filing with the
1379 department of an application for a permit to construct or
1380 substantially modify a solid waste management facility, the
1381 applicant shall notify the local government having jurisdiction
1382 over the facility of the filing of the application. The
1383 applicant also shall publish notice of the filing of the
1384 application in a newspaper of general circulation in the area
1385 where the facility will be located. Notice shall be given and
1386 published in accordance with applicable department rules. The
1387 department shall not issue the requested permit until the
1388 applicant has provided the department with proof that the
1389 notices required by this subsection have been given. Issuance of
1390 a permit does not relieve an applicant from compliance with
1391 local zoning or land use ordinances, or with any other law,
1392 rules, or ordinances.
1393 (12) ~~(15)~~ Construction and demolition debris must be
1394 separated from the solid waste stream and segregated in separate
1395 locations at a solid waste disposal facility or other permitted
1396 site.
1397 (13) ~~(16)~~ No facility, solely by virtue of the fact that it
1398 uses processed yard trash or clean wood or paper waste as a fuel
1399 source, shall be considered to be a solid waste disposal
1400 facility.

1401 Section 15. Section 403.7071, Florida Statutes, is created
1402 to read:
1403 403.7071 Management of storm-generated debris.--Solid
1404 waste generated as a result of a storm event that is the subject
1405 of an emergency order issued by the department may be managed as
1406 follows:
1407 (1) The Department of Environmental Protection may issue
1408 field authorizations for staging areas in those counties
1409 affected by a storm event. Such staging areas may be used for
1410 the temporary storage and management of storm-generated debris,
1411 including the chipping, grinding, or burning of vegetative
1412 debris. Field authorizations may be requested by providing a
1413 notice to the local office of the department containing a
1414 description of the design and operation of the staging area; the
1415 location of the staging area; and the name, address, and
1416 telephone number of the site manager. Field authorizations also
1417 may be issued by the department staff without prior notice.
1418 Written records of all field authorizations shall be created and
1419 maintained by department staff. Field authorizations may include
1420 specific conditions for the operation and closure of the staging
1421 area and shall include a required closure date. A local
1422 government shall avoid locating a staging area in wetlands and
1423 other surface waters to the greatest extent possible, and the
1424 area that is used or affected by a staging area must be fully
1425 restored upon cessation of use of the area.
1426 (2) Storm-generated vegetative debris managed at a staging
1427 area may be disposed of in a permitted lined or unlined
1428 landfill, a permitted land clearing debris facility, or a

1429 permitted construction and demolition debris disposal facility.
1430 Vegetative debris may also be managed at a permitted waste
1431 processing facility or a registered yard trash processing
1432 facility.
1433 (3) Construction and demolition debris that is mixed with
1434 other storm-generated debris need not be segregated from other
1435 solid waste prior to disposal in a lined landfill. Construction
1436 and demolition debris that is source-separated or is separated
1437 from other hurricane-generated debris at an authorized staging
1438 area, or at another area specifically authorized by the
1439 department, may be managed at a permitted construction and
1440 demolition debris disposal or recycling facility upon approval
1441 by the department of the methods and operational practices used
1442 to inspect the waste during segregation.
1443 (4) Unsalvageable refrigerators and freezers containing
1444 solid waste, such as rotting food, which may create a sanitary
1445 nuisance may be disposed of in a permitted lined landfill;
1446 however, chlorofluorocarbons and capacitors must be removed and
1447 recycled to the greatest extent practicable using techniques and
1448 personnel meeting relevant federal requirements.
1449 (5) Local governments may conduct the burning of storm-
1450 generated yard trash and other vegetative debris in air-curtain
1451 incinerators without prior notice to the department. Demolition
1452 debris may also be burned in air-curtain incinerators if the
1453 material is limited to untreated wood. Within 10 days after
1454 commencing such burning, the local government shall notify the
1455 department in writing describing the general nature of the
1456 materials burned; the location and method of burning; and the

1457 name, address, and telephone number of the representative of the
1458 local government to contact concerning the work. The operator of
1459 the air-curtain incinerator is subject to any requirement to
1460 obtain an open-burning authorization from the Division of
1461 Forestry or any other agency empowered to grant such
1462 authorization.
1463 Section 16. Section 403.708, Florida Statutes, is amended
1464 to read:
1465 403.708 Prohibition; penalty.--
1466 (1) No person shall:
1467 (a) Place or deposit any solid waste in or on the land or
1468 waters located within the state except in a manner approved by
1469 the department and consistent with applicable approved programs
1470 of counties or municipalities. However, nothing in this act
1471 shall be construed to prohibit the disposal of solid waste
1472 without a permit as provided in s. 403.707(2).
1473 (b) Burn solid waste except in a manner prescribed by the
1474 department and consistent with applicable approved programs of
1475 counties or municipalities.
1476 (c) Construct, alter, modify, or operate a solid waste
1477 management facility or site without first having obtained from
1478 the department any permit required by s. 403.707.
1479 (2) No beverage shall be sold or offered for sale within
1480 the state in a beverage container designed and constructed so
1481 that the container is opened by detaching a metal ring or tab.
1482 (3) For purposes of subsections (2), (9), and (10):
1483 ~~(a) "Degradable," with respect to any material, means that~~
1484 ~~such material, after being discarded, is capable of decomposing~~

1485 ~~to components other than heavy metals or other toxic substances,~~
1486 ~~after exposure to bacteria, light, or outdoor elements.~~
1487 (a) ~~(b)~~ "Beverage" means soda water, carbonated natural or
1488 mineral water, or other nonalcoholic carbonated drinks; soft
1489 drinks, whether or not carbonated; beer, ale, or other malt
1490 drink of whatever alcoholic content; or a mixed wine drink or a
1491 mixed spirit drink.
1492 (b) ~~(c)~~ "Beverage container" means an airtight container
1493 which at the time of sale contains 1 gallon or less of a
1494 beverage, or the metric equivalent of 1 gallon or less, and
1495 which is composed of metal, plastic, or glass or a combination
1496 thereof.
1497 (4) The Division of Alcoholic Beverages and Tobacco of the
1498 Department of Business and Professional Regulation may impose a
1499 fine of not more than $100 on any person currently licensed
1500 pursuant to s. 561.14 for each violation of the provisions of
1501 subsection (2). If the violation is of a continuing nature, each
1502 day during which such violation occurs shall constitute a
1503 separate and distinct offense and shall be subject to a separate
1504 fine.
1505 (5) The Department of Agriculture and Consumer Services
1506 may impose a fine of not more than $100 on any person not
1507 currently licensed pursuant to s. 561.14 for each violation of
1508 the provisions of subsection (2). If the violation is of a
1509 continuing nature, each day during which such violation occurs
1510 shall constitute a separate and distinct offense and shall be
1511 subject to a separate fine.
1512 (6) Fifty percent of each fine collected pursuant to

1513 subsections (4) and (5) shall be deposited into the Solid Waste
1514 Management Trust Fund. The balance of fines collected pursuant
1515 to subsection (4) shall be deposited into the Alcoholic Beverage
1516 and Tobacco Trust Fund for the use of the division for
1517 inspection and enforcement of the provisions of this section.
1518 The balance of fines collected pursuant to subsection (5) shall
1519 be deposited into the General Inspection Trust Fund for the use
1520 of the Department of Agriculture and Consumer Services for
1521 inspection and enforcement of the provisions of this section.
1522 (7) The Division of Alcoholic Beverages and Tobacco and
1523 the Department of Agriculture and Consumer Services shall
1524 coordinate their responsibilities under the provisions of this
1525 section to ensure that inspections and enforcement are
1526 accomplished in an efficient, cost-effective manner.
1527 (8) A person may not distribute, sell, or expose for sale
1528 in this state any plastic bottle or rigid container intended for
1529 single use unless such container has a molded label indicating
1530 the plastic resin used to produce the plastic container. The
1531 label must appear on or near the bottom of the plastic container
1532 product and be clearly visible. This label must consist of a
1533 number placed inside a triangle and letters placed below the
1534 triangle. The triangle must be equilateral and must be formed by
1535 three arrows, and, in the middle of each arrow, there must be a
1536 rounded bend that forms one apex of the triangle. The pointer,
1537 or arrowhead, of each arrow must be at the midpoint of a side of
1538 the triangle, and a short gap must separate each pointer from
1539 the base of the adjacent arrow. The three curved arrows that
1540 form the triangle must depict a clockwise path around the code

1541 number. Plastic bottles of less than 16 ounces, rigid plastic
1542 containers of less than 8 ounces, and plastic casings on lead-
1543 acid storage batteries are not required to be labeled under this
1544 section. The numbers and letters must be as follows:
1545 (a) For polyethylene terephthalate, the letters "PETE" and
1546 the number 1.
1547 (b) For high-density polyethylene, the letters "HDPE" and
1548 the number 2.
1549 (c) For vinyl, the letter "V" and the number 3.
1550 (d) For low-density polyethylene, the letters "LDPE" and
1551 the number 4.
1552 (e) For polypropylene, the letters "PP" and the number 5.
1553 (f) For polystyrene, the letters "PS" and the number 6.
1554 (g) For any other, the letters "OTHER" and the number 7.
1555 (9) No person shall distribute, sell, or expose for sale
1556 in this state any product packaged in a container or packing
1557 material manufactured with fully halogenated chlorofluorocarbons
1558 (CFC). Producers of containers or packing material manufactured
1559 with chlorofluorocarbons (CFC) are urged to introduce
1560 alternative packaging materials which are environmentally
1561 compatible.
1562 (10) The packaging of products manufactured or sold in the
1563 state may not be controlled by governmental rule, regulation, or
1564 ordinance adopted after March 1, 1974, other than as expressly
1565 provided in this act.
1566 (11) Violations of this part or rules, regulations,
1567 permits, or orders issued thereunder by the department and
1568 violations of approved local programs of counties or

1569 municipalities or rules, regulations, or orders issued
1570 thereunder shall be punishable by a civil penalty as provided in
1571 s. 403.141.
1572 (12) The department or any county or municipality may also
1573 seek to enjoin the violation of, or enforce compliance with,
1574 this part or any program adopted hereunder as provided in s.
1575 403.131.
1576 (13) In accordance with the following schedule, no person
1577 who knows or who should know of the nature of such solid waste
1578 shall dispose of such solid waste in landfills:
1579 (a) Lead-acid batteries~~, after January 1, 1989~~. Lead-acid
1580 batteries also may ~~shall~~ not be disposed of in any waste-to-
1581 energy facility ~~after January 1, 1989~~. To encourage proper
1582 collection and recycling, all persons who sell lead-acid
1583 batteries at retail shall accept used lead-acid batteries as
1584 trade-ins for new lead-acid batteries.
1585 (b) Used oil~~, after October 1, 1988~~.
1586 (c) Yard trash~~, after January 1, 1992,~~ except in lined
1587 ~~unlined~~ landfills classified by department rule as Class I
1588 landfills. Yard trash that is source separated from solid waste
1589 may be accepted at a solid waste disposal area where the area
1590 provides and maintains separate yard trash composting
1591 facilities. The department recognizes that incidental amounts of
1592 yard trash may be disposed of in Class I ~~lined~~ landfills. In any
1593 enforcement action taken pursuant to this paragraph, the
1594 department shall consider the difficulty of removing incidental
1595 amounts of yard trash from a mixed solid waste stream.
1596 (d) White goods~~, after January 1, 1990~~.

1597
1598 ~~Prior to the effective dates specified in paragraphs (a)-(d),~~
1599 ~~the department shall identify and assist in developing~~
1600 ~~alternative disposal, processing, or recycling options for the~~
1601 ~~solid wastes identified in paragraphs (a)-(d).~~
1602 Section 17. Section 403.709, Florida Statutes, is amended
1603 to read:
1604 403.709 Solid Waste Management Trust Fund; use of waste
1605 tire fees.--There is created the Solid Waste Management Trust
1606 Fund, to be administered by the department.
1607 (1) ~~From~~ The annual revenues deposited in the trust fund,
1608 unless otherwise specified in the General Appropriations Act,
1609 shall be used for the following purposes:
1610 (a) ~~(1)~~ ~~Up to 40 percent shall be used for~~ Funding solid
1611 waste activities of the department and other state agencies,
1612 such as providing technical assistance to local governments and
1613 the private sector, performing solid waste regulatory and
1614 enforcement functions, preparing solid waste documents, and
1615 implementing solid waste education programs.
1616 (b) ~~(2)~~ ~~Up to 4.5 percent shall be used for~~ Funding
1617 research and training programs relating to solid waste
1618 management through the Center for Solid and Hazardous Waste
1619 Management and other organizations which can reasonably
1620 demonstrate the capability to carry out such projects.
1621 (c) ~~(3)~~ ~~Up to 11 percent shall be used for~~ Funding to
1622 supplement any other funds provided to the Department of
1623 Agriculture and Consumer Services for mosquito control. This
1624 distribution shall be annually transferred to the General

1625 Inspection Trust Fund in the Department of Agriculture and
1626 Consumer Services to be used for mosquito control, especially
1627 control of West Nile Virus.
1628 (d) ~~(4)~~ ~~Up to 4.5 percent shall be used for~~ Funding to the
1629 Department of Transportation for litter prevention and control
1630 programs ~~coordinated by Keep Florida Beautiful, Inc~~.
1631 (e) ~~(5)~~ ~~A minimum of 40 percent shall be used for~~ Funding a
1632 competitive and innovative grant program pursuant to s. 403.7095
1633 for activities relating to recycling and reducing the volume of
1634 municipal solid waste, including waste tires requiring final
1635 disposal.
1636 (2) ~~(6)~~ The department shall recover to the use of the fund
1637 from the site owner or the person responsible for the
1638 accumulation of tires at the site, jointly and severally, all
1639 sums expended from the fund pursuant to this section to manage
1640 tires at an illegal waste tire site, except that the department
1641 may decline to pursue such recovery if it finds the amount
1642 involved too small or the likelihood of recovery too uncertain.
1643 If a court determines that the owner is unable or unwilling to
1644 comply with the rules adopted pursuant to this section or s.
1645 403.717, the court may authorize the department to take
1646 possession and control of the waste tire site in order to
1647 protect the health, safety, and welfare of the community and the
1648 environment.
1649 (3) ~~(7)~~ The department may impose a lien on the real
1650 property on which the waste tire site is located and the waste
1651 tires equal to the estimated cost to bring the tire site into
1652 compliance, including attorney's fees and court costs. Any owner

1653 whose property has such a lien imposed may release her or his
1654 property from any lien claimed under this subsection by filing
1655 with the clerk of the circuit court a cash or surety bond,
1656 payable to the department in the amount of the estimated cost of
1657 bringing the tire site into compliance with department rules,
1658 including attorney's fees and court costs, or the value of the
1659 property after the abatement action is complete, whichever is
1660 less. No lien provided by this subsection shall continue for a
1661 period longer than 4 years after the completion of the abatement
1662 action unless within that time an action to enforce the lien is
1663 commenced in a court of competent jurisdiction. The department
1664 may take action to enforce the lien in the same manner used for
1665 construction liens under part I of chapter 713.
1666 (4) ~~(8)~~ This section does not limit the use of other
1667 remedies available to the department.
1668 Section 18. Subsection (5) of section 403.7095, Florida
1669 Statutes, is amended to read:
1670 403.7095 Solid waste management grant program.--
1671 (5) From the funds made available pursuant to s.
1672 403.709(1)(e) ~~s. 403.709(5)~~ for the grant program created by
1673 this section, the following distributions shall be made:
1674 (a) Up to 15 percent for the program described in
1675 subsection (1);
1676 (b) Up to 35 percent for the program described in
1677 subsection (3); and
1678 (c) Up to 50 percent for the program described in
1679 subsection (4).
1680 Section 19. Section 403.7125, Florida Statutes, is amended

1681 to read:
1682 403.7125 Financial assurance for closure ~~Landfill~~
1683 ~~management escrow account~~.--
1684 ~~(1) As used in this section:~~
1685 ~~(a) "Landfill" means any solid waste land disposal area~~
1686 ~~for which a permit, other than a general permit, is required by~~
1687 ~~s. 403.707 that receives solid waste for disposal in or upon~~
1688 ~~land other than a land spreading site, injection well, or a~~
1689 ~~surface impoundment.~~
1690 ~~(b) "Closure" means the ceasing operation of a landfill~~
1691 ~~and securing such landfill so that it does not pose a~~
1692 ~~significant threat to public health or the environment and~~
1693 ~~includes long term monitoring and maintenance of a landfill.~~
1694 ~~(c) "Owner or operator" means, in addition to the usual~~
1695 ~~meanings of the term, any owner of record of any interest in~~
1696 ~~land whereon a landfill is or has been located and any person or~~
1697 ~~corporation which owns a majority interest in any other~~
1698 ~~corporation which is the owner or operator of a landfill.~~
1699 (1) ~~(2)~~ Every owner or operator of a landfill is jointly
1700 and severally liable for the improper operation and closure of
1701 the landfill, as provided by law. As used in this section, the
1702 term "owner or operator" means any owner of record of any
1703 interest in land wherein a landfill is or has been located and
1704 any person or corporation that owns a majority interest in any
1705 other corporation that is the owner or operator of a landfill.
1706 (2) ~~(3)~~ The owner or operator of a landfill owned or
1707 operated by a local or state government or the Federal
1708 Government shall establish a fee, or a surcharge on existing

1709 fees or other appropriate revenue-producing mechanism, to ensure
1710 the availability of financial resources for the proper closure
1711 of the landfill. However, the disposal of solid waste by persons
1712 on their own property, as described in s. 403.707(2), is exempt
1713 from the provisions of this section.
1714 (a) The revenue-producing mechanism must produce revenue
1715 at a rate sufficient to generate funds to meet state and federal
1716 landfill closure requirements.
1717 (b) The revenue shall be deposited in an interest-bearing
1718 escrow account to be held and administered by the owner or
1719 operator. The owner or operator shall file with the department
1720 an annual audit of the account. The audit shall be conducted by
1721 an independent certified public accountant. Failure to collect
1722 or report such revenue, except as allowed in subsection (3) ~~(4)~~,
1723 is a noncriminal violation punishable by a fine of not more than
1724 $5,000 for each offense. The owner or operator may make
1725 expenditures from the account and its accumulated interest only
1726 for the purpose of landfill closure and, if such expenditures do
1727 not deplete the fund to the detriment of eventual closure, for
1728 planning and construction of resource recovery or landfill
1729 facilities. Any moneys remaining in the account after paying for
1730 proper and complete closure, as determined by the department,
1731 shall, if the owner or operator does not operate a landfill, be
1732 deposited by the owner or operator into the general fund or the
1733 appropriate solid waste fund of the local government of
1734 jurisdiction.
1735 (c) The revenue generated under this subsection and any
1736 accumulated interest thereon may be applied to the payment of,

1737 or pledged as security for, the payment of revenue bonds issued
1738 in whole or in part for the purpose of complying with state and
1739 federal landfill closure requirements. Such application or
1740 pledge may be made directly in the proceedings authorizing such
1741 bonds or in an agreement with an insurer of bonds to assure such
1742 insurer of additional security therefor.
1743 (d) The provisions of s. 212.055 that relate to raising of
1744 revenues for landfill closure or long-term maintenance do not
1745 relieve a landfill owner or operator from the obligations of
1746 this section.
1747 (e) The owner or operator of any landfill that had
1748 established an escrow account in accordance with this section
1749 and the conditions of its permit prior to January 1, 2006, may
1750 continue to use that escrow account to provide financial
1751 assurance for closure of that landfill, even if that landfill is
1752 not owned or operated by a local or state government or the
1753 Federal Government.
1754 (3) ~~(4)~~ An owner or operator of a landfill owned or
1755 operated by a local or state government or by the Federal
1756 Government may provide financial assurance to ~~establish proof of~~
1757 ~~financial responsibility with~~ the department in lieu of the
1758 requirements of subsection (2) ~~(3)~~. An owner or operator of any
1759 other landfill, or any other solid waste management facility
1760 designated by department rule, shall provide financial assurance
1761 to the department for the closure of the facility. Such
1762 financial assurance ~~proof~~ may include surety bonds, certificates
1763 of deposit, securities, letters of credit, or other documents
1764 showing that the owner or operator has sufficient financial

1765 resources to cover, at a minimum, the costs of complying with
1766 applicable ~~landfill~~ closure requirements. The owner or operator
1767 shall estimate such costs to the satisfaction of the department.
1768 (4) ~~(5)~~ This section does not repeal, limit, or abrogate
1769 any other law authorizing local governments to fix, levy, or
1770 charge rates, fees, or charges for the purpose of complying with
1771 state and federal landfill closure requirements.
1772 (5) ~~(6)~~ The department shall adopt rules to implement this
1773 section.
1774 Section 20. Section 403.716, Florida Statutes, is amended
1775 to read:
1776 403.716 Training of operators of solid waste management
1777 and other facilities.--
1778 (1) The department shall establish qualifications for, and
1779 encourage the development of training programs for, operators of
1780 landfills, coordinators of local recycling programs, ~~operators~~
1781 ~~of waste-to-energy facilities, biomedical waste incinerators,~~
1782 ~~and mobile soil thermal treatment units or facilities,~~ and
1783 operators of other solid waste management facilities.
1784 (2) The department shall work with accredited community
1785 colleges, career centers, state universities, and private
1786 institutions in developing educational materials, courses of
1787 study, and other such information to be made available for
1788 persons seeking to be trained as operators of solid waste
1789 management facilities.
1790 (3) A person may not perform the duties of an operator of
1791 a landfill~~, or perform the duties of an operator of a waste-to-~~
1792 ~~energy facility, biomedical waste incinerator, or mobile soil~~

1793 ~~thermal treatment unit or facility,~~ unless she or he has
1794 completed an operator training course approved by the department
1795 or she or he has qualified as an interim operator in compliance
1796 with requirements established by the department by rule. An
1797 owner of a landfill~~, waste-to-energy facility, biomedical waste~~
1798 ~~incinerator, or mobile soil thermal treatment unit or facility~~
1799 may not employ any person to perform the duties of an operator
1800 unless such person has completed an approved landfill~~, waste-to-~~
1801 ~~energy facility, biomedical waste incinerator, or mobile soil~~
1802 ~~thermal treatment unit or facility~~ operator training course, as
1803 appropriate, or has qualified as an interim operator in
1804 compliance with requirements established by the department by
1805 rule. The department may establish by rule operator training
1806 requirements for other solid waste management facilities and
1807 facility operators.
1808 (4) The department has authority to adopt minimum
1809 standards and other rules pursuant to ss. 120.536(1) and 120.54
1810 to implement the provisions of this section. The department
1811 shall ensure the safe, healthy, and lawful operation of solid
1812 waste management facilities in this state. The department may
1813 establish by rule various classifications for operators to cover
1814 the need for differing levels of training required to operate
1815 various types of solid waste management facilities due to
1816 different operating requirements at such facilities.
1817 (5) For purposes of this section, the term "operator"
1818 means any person, including the owner, who is principally
1819 engaged in, and is in charge of, the actual operation,
1820 supervision, and maintenance of a solid waste management

1821 facility and includes the person in charge of a shift or period
1822 of operation during any part of the day.
1823 Section 21. Section 403.717, Florida Statutes, is amended
1824 to read:
1825 403.717 Waste tire and lead-acid battery requirements.--
1826 (1) For purposes of this section and ss. 403.718 and
1827 403.7185:
1828 (a) "Department" means the Department of Environmental
1829 Protection.
1830 (b) "Motor vehicle" means an automobile, motorcycle,
1831 truck, trailer, semitrailer, truck tractor and semitrailer
1832 combination, or any other vehicle operated in this state, used
1833 to transport persons or property and propelled by power other
1834 than muscular power, but the term does not include traction
1835 engines, road rollers, such vehicles as run only upon a track,
1836 bicycles, mopeds, or farm tractors and trailers.
1837 (c) "Tire" means a continuous solid or pneumatic rubber
1838 covering encircling the wheel of a motor vehicle.
1839 (d) "Waste tire" means a tire that has been removed from a
1840 motor vehicle and has not been retreaded or regrooved. "Waste
1841 tire" includes, but is not limited to, used tires and processed
1842 tires. The term does not include solid rubber tires and tires
1843 that are inseparable from the rim.
1844 (e) "Waste tire collection center" means a site where
1845 waste tires are collected from the public prior to being offered
1846 for recycling and where fewer than 1,500 tires are kept on the
1847 site on any given day.
1848 (f) "Waste tire processing facility" means a site where

1849 equipment is used to treat waste tires mechanically, chemically,
1850 or thermally so that the resulting material is a marketable
1851 product or is suitable for proper disposal ~~recapture reusable~~
1852 ~~byproducts from waste tires or to cut, burn, or otherwise alter~~
1853 ~~waste tires so that they are no longer whole~~. The term includes
1854 mobile waste tire processing equipment.
1855 (g) "Waste tire site" means a site at which 1,500 or more
1856 waste tires are accumulated.
1857 (h) "Lead-acid battery" means a ~~those~~ lead-acid battery
1858 ~~batteries~~ designed for use in motor vehicles, vessels, and
1859 aircraft, and includes such batteries when sold new as a
1860 component part of a motor vehicle, vessel, or aircraft, but not
1861 when sold to recycle components.
1862 (i) "Indoor" means within a structure that ~~which~~ excludes
1863 rain and public access and would control air flows in the event
1864 of a fire.
1865 (j) "Processed tire" means a tire that has been treated
1866 mechanically, chemically, or thermally so that the resulting
1867 material is a marketable product or is suitable for proper
1868 disposal.
1869 (k) "Used tire" means a waste tire which has a minimum
1870 tread depth of 3/32 inch or greater and is suitable for use on a
1871 motor vehicle.
1872 (2) The owner or operator of any waste tire site shall
1873 provide the department with information concerning the site's
1874 location, size, and the approximate number of waste tires that
1875 are accumulated at the site and shall initiate steps to comply
1876 with subsection (3).

1877 (3)(a) A person may not maintain a waste tire site unless
1878 such site is:
1879 1. An integral part of the person's permitted waste tire
1880 processing facility; or
1881 2. Used for the storage of waste tires prior to processing
1882 and is located at a permitted solid waste management facility.
1883 (b) It is unlawful for any person to dispose of waste
1884 tires or processed tires in the state except at a permitted
1885 solid waste management facility. Collection or storage of waste
1886 tires at a permitted waste tire processing facility or waste
1887 tire collection center prior to processing or use does not
1888 constitute disposal, provided that the collection and storage
1889 complies with rules established by the department.
1890 (c) Whole waste tires may not be deposited in a landfill
1891 as a method of ultimate disposal.
1892 (d) A person may not contract with a waste tire collector
1893 for the transportation, disposal, or processing of waste tires
1894 unless the collector is registered with the department or exempt
1895 from requirements provided under this section. Any person who
1896 contracts with a waste tire collector for the transportation of
1897 more than 25 waste tires per month from a single business
1898 location must maintain records for that location and make them
1899 available for review by the department or by law enforcement
1900 officers, which records must contain the date when the tires
1901 were transported, the quantity of tires, the registration number
1902 of the collector, and the name of the driver.
1903 (4) The department shall adopt rules to carry out the
1904 provisions of this section and s. 403.718. Such rules shall:

1905 (a) Provide for the administration or revocation of waste
1906 tire processing facility permits, including mobile processor
1907 permits;
1908 (b) Provide for the administration or revocation of waste
1909 tire collector registrations, the fees for which may not exceed
1910 $50 per vehicle registered annually;
1911 (c) Provide for the administration or revocation of waste
1912 tire collection center permits, the fee for which may not exceed
1913 $250 annually;
1914 (d) Set standards, including financial assurance
1915 standards, for waste tire processing facilities and associated
1916 waste tire sites, waste tire collection centers, waste tire
1917 collectors, and for the storage of waste tires and processed
1918 tires, including storage indoors;
1919 (e) The department may by rule exempt not-for-hire waste
1920 tire collectors and processing facilities from financial
1921 assurance requirements;
1922 (f) Authorize the final disposal of waste tires at a
1923 permitted solid waste disposal facility provided the tires have
1924 been cut into sufficiently small parts to assure their proper
1925 disposal; and
1926 (g) Allow waste tire material which has been cut into
1927 sufficiently small parts to be used as daily cover material for
1928 a landfill.
1929 ~~(5) A permit is not required for tire storage at:~~
1930 ~~(a) A tire retreading business where fewer than 1,500~~
1931 ~~waste tires are kept on the business premises;~~
1932 ~~(b) A business that, in the ordinary course of business,~~

1933 ~~removes tires from motor vehicles if fewer than 1,500 of these~~
1934 ~~tires are kept on the business premises; or~~
1935 ~~(c) A retail tire-selling business which is serving as a~~
1936 ~~waste tire collection center if fewer than 1,500 waste tires are~~
1937 ~~kept on the business premises.~~
1938 (5) ~~(6)~~ (a) The department shall encourage the voluntary
1939 establishment of waste tire collection centers at retail tire-
1940 selling businesses, waste tire processing facilities, and solid
1941 waste disposal facilities, to be open to the public for the
1942 deposit of waste tires.
1943 (b) The department is authorized to establish an
1944 incentives program for individuals to encourage them to return
1945 their waste tires to a waste tire collection center. The
1946 incentives used by the department may involve the use of
1947 discount or prize coupons, prize drawings, promotional
1948 giveaways, or other activities the department determines will
1949 promote collection, reuse, volume reduction, and proper disposal
1950 of waste tires.
1951 (c) The department may contract with a promotion company
1952 to administer the incentives program.
1953 Section 22. Section 403.7221, Florida Statutes, is
1954 transferred, renumbered as section 403.70715, Florida Statutes,
1955 and amended to read:
1956 403.70715 ~~403.7221~~ Research, development, and
1957 demonstration permits.--
1958 (1) The department may issue a research, development, and
1959 demonstration permit to the owner or operator of any solid waste
1960 management facility, including any hazardous waste management

1961 facility, who proposes to utilize an innovative and experimental
1962 solid waste treatment technology or process for which permit
1963 standards have not been promulgated. Permits shall:
1964 (a) Provide for construction and operation of the facility
1965 for not longer than 3 years ~~1 year~~, renewable no more than 3
1966 times.
1967 (b) Provide for the receipt and treatment by the facility
1968 of only those types and quantities of solid waste which the
1969 department deems necessary for purposes of determining the
1970 performance capabilities of the technology or process and the
1971 effects of such technology or process on human health and the
1972 environment.
1973 (c) Include requirements the department deems necessary
1974 which may include monitoring, operation, testing, financial
1975 responsibility, closure, and remedial action.
1976 (2) The department may apply the criteria set forth in
1977 this section in establishing the conditions of each permit
1978 without separate establishment of rules implementing such
1979 criteria.
1980 (3) For the purpose of expediting review and issuance of
1981 permits under this section, the department may, consistent with
1982 the protection of human health and the environment, modify or
1983 waive permit application and permit issuance requirements,
1984 except that there shall be no modification or waiver of
1985 regulations regarding financial responsibility or of procedures
1986 established regarding public participation.
1987 (4) The department may order an immediate termination of
1988 all operations at the facility at any time upon a determination

1989 that termination is necessary to protect human health and the
1990 environment.
1991 Section 23. Subsection (2) of section 403.201, Florida
1992 Statutes, is amended to read:
1993 403.201 Variances.--
1994 (2) No variance shall be granted from any provision or
1995 requirement concerning discharges of waste into waters of the
1996 state or hazardous waste management which would result in the
1997 provision or requirement being less stringent than a comparable
1998 federal provision or requirement, except as provided in s.
1999 403.70715 ~~s. 403.7221~~.
2000 Section 24. Section 403.722, Florida Statutes, is amended
2001 to read:
2002 403.722 Permits; hazardous waste disposal, storage, and
2003 treatment facilities.--
2004 (1) Each person who intends to or is required to
2005 construct, modify, operate, or close a hazardous waste disposal,
2006 storage, or treatment facility shall obtain a construction
2007 permit, operation permit, postclosure permit, clean closure plan
2008 approval, or corrective action permit from the department prior
2009 to constructing, modifying, operating, or closing the facility.
2010 By rule, the department may provide for the issuance of a single
2011 permit instead of any two or more hazardous waste facility
2012 permits.
2013 (2) Any owner or operator of a hazardous waste facility in
2014 operation on the effective date of the department rule listing
2015 and identifying hazardous wastes shall file an application for a
2016 temporary operation permit within 6 months after the effective

2017 date of such rule. The department, upon receipt of a properly
2018 completed application, shall identify any department rules which
2019 are being violated by the facility and shall establish a
2020 compliance schedule. However, if the department determines that
2021 an imminent hazard exists, the department may take any necessary
2022 action pursuant to s. 403.726 to abate the hazard. The
2023 department shall issue a temporary operation permit to such
2024 facility within the time constraints of s. 120.60 upon
2025 submission of a properly completed application which is in
2026 conformance with this subsection. Temporary operation permits
2027 for such facilities shall be issued for up to 3 years only. Upon
2028 termination of the temporary operation permit and upon proper
2029 application by the facility owner or operator, the department
2030 shall issue an operation permit for such existing facilities if
2031 the applicant has corrected all of the deficiencies identified
2032 in the temporary operation permit and is in compliance with all
2033 other rules adopted pursuant to this act.
2034 (3) ~~Permit~~ Applicants shall provide any information that
2035 ~~which~~ will enable the department to determine that the proposed
2036 construction, modification, operation, ~~or~~ closure, or corrective
2037 action will comply with this act and any applicable rules. In no
2038 instance shall any person construct, modify, operate, or close a
2039 facility or perform corrective actions at a facility in
2040 contravention of the standards, requirements, or criteria for a
2041 hazardous waste facility. Authorizations ~~Permits~~ issued under
2042 this section may include any permit conditions necessary to
2043 achieve compliance with applicable hazardous waste rules and
2044 necessary to protect human health and the environment.

2045 (4) The department may require, in an ~~a permit~~
2046 application, submission of information concerning matters
2047 specified in s. 403.721(6) as well as information respecting:
2048 (a) Estimates of the composition, quantity, and
2049 concentration of any hazardous waste identified or listed under
2050 this act or combinations of any such waste and any other solid
2051 waste~~,~~ proposed to be disposed of, treated, transported, or
2052 stored and the time, frequency, or rate at which such waste is
2053 proposed to be disposed of, treated, transported, or stored; and
2054 (b) The site to which such hazardous waste or the products
2055 of treatment of such hazardous waste will be transported and at
2056 which it will be disposed of, treated, or stored.
2057 (5) An authorization ~~A permit~~ issued pursuant to this
2058 section is not a vested right. The department may revoke or
2059 modify any such authorization ~~permit~~.
2060 (a) Authorizations ~~Permits~~ may be revoked for failure of
2061 the holder to comply with the provisions of this act, the terms
2062 of the authorization ~~permit~~, the standards, requirements, or
2063 criteria adopted pursuant to this act, or an order of the
2064 department; for refusal by the holder to allow lawful
2065 inspection; for submission by the holder of false or inaccurate
2066 information in the permit application; or if necessary to
2067 protect the public health or the environment.
2068 (b) Authorizations ~~Permits~~ may be modified, upon request
2069 of the holder ~~permittee~~, if such modification is not in
2070 violation of this act or department rules or if the department
2071 finds the modification necessary to enable the facility to
2072 remain in compliance with this act and department rules.

2073 (c) An owner or operator of a hazardous waste facility in
2074 existence on the effective date of a department rule changing an
2075 exemption or listing and identifying the hazardous wastes that
2076 ~~which~~ require that facility to be permitted who notifies the
2077 department pursuant to s. 403.72, and who has applied for a
2078 permit pursuant to subsection (2), may continue to operate until
2079 ~~be~~ issued a temporary operation permit. If such owner or
2080 operator intends to or is required to discontinue operation, the
2081 temporary operation permit must include final closure
2082 conditions.
2083 (6) A hazardous waste facility permit issued pursuant to
2084 this section shall satisfy the permit requirements of s.
2085 403.707(1). The permit exemptions provided in s. 403.707(2)
2086 shall not apply to hazardous waste.
2087 (7) The department may establish ~~permit~~ application
2088 procedures for hazardous waste facilities, which procedures may
2089 vary based on differences in amounts, types, and concentrations
2090 of hazardous waste and on differences in the size and location
2091 of facilities and which procedures may take into account
2092 permitting procedures of other laws not in conflict with this
2093 act.
2094 (8) For authorizations ~~permits~~ required by this section,
2095 the department may require that a fee be paid and may establish,
2096 by rule, a fee schedule based on the degree of hazard and the
2097 amount and type of hazardous waste disposed of, stored, or
2098 treated at the facility.
2099 (9) It shall not be a requirement for the issuance of ~~such~~
2100 a hazardous waste authorization ~~permit~~ that the facility

2101 complies with an adopted local government comprehensive plan,
2102 local land use ordinances, zoning ordinances or regulations, or
2103 other local ordinances. However, such an authorization ~~a permit~~
2104 issued by the department shall not override adopted local
2105 government comprehensive plans, local land use ordinances,
2106 zoning ordinances or regulations, or other local ordinances.
2107 (10) Notwithstanding ss. 120.60(1) and 403.815:
2108 (a) The time specified by law for permit review shall be
2109 tolled by the request of the department for publication of
2110 notice of proposed agency action to issue a permit for a
2111 hazardous waste treatment, storage, or disposal facility and
2112 shall resume 45 days after receipt by the department of proof of
2113 publication. If, within 45 days after publication of the notice
2114 of the proposed agency action, the department receives written
2115 notice of opposition to the intention of the agency to issue
2116 such permit and receives a request for a hearing, the department
2117 shall provide for a hearing pursuant to ss. 120.569 and 120.57,
2118 if requested by a substantially affected party, or an informal
2119 public meeting, if requested by any other person. The failure to
2120 request a hearing within 45 days after publication of the notice
2121 of the proposed agency action constitutes a waiver of the right
2122 to a hearing under ss. 120.569 and 120.57. The permit review
2123 time period shall continue to be tolled until the completion of
2124 such hearing or meeting and shall resume within 15 days after
2125 conclusion of a public hearing held on the application or within
2126 45 days after the recommended order is submitted to the agency
2127 and the parties, whichever is later.
2128 (b) Within 60 days after receipt of an application for a

2129 hazardous waste facility permit, the department shall examine
2130 the application, notify the applicant of any apparent errors or
2131 omissions, and request any additional information the department
2132 is permitted by law to require. The failure to correct an error
2133 or omission or to supply additional information shall not be
2134 grounds for denial of the permit unless the department timely
2135 notified the applicant within the 60-day period, except that
2136 this paragraph does not prevent the department from denying an
2137 application if the department does not possess sufficient
2138 information to ensure that the facility is in compliance with
2139 applicable statutes and rules.
2140 (c) The department shall approve or deny each hazardous
2141 waste facility permit within 135 days after receipt of the
2142 original application or after receipt of the requested
2143 additional information or correction of errors or omissions.
2144 However, the failure of the department to approve or deny within
2145 the 135-day time period does not result in the automatic
2146 approval or denial of the permit and does not prevent the
2147 inclusion of specific permit conditions which are necessary to
2148 ensure compliance with applicable statutes and rules. If the
2149 department fails to approve or deny the permit within the 135-
2150 day period, the applicant may petition for a writ of mandamus to
2151 compel the department to act consistently with applicable
2152 regulatory requirements.
2153 (11) Hazardous waste facility operation permits shall be
2154 issued for no more than 5 years.
2155 (12) On the same day of filing with the department of an
2156 application for a permit for the construction modification, or

2157 operation of a hazardous waste facility, the applicant shall
2158 notify each city and county within 1 mile of the facility of the
2159 filing of the application and shall publish notice of the filing
2160 of the application. The applicant shall publish a second notice
2161 of the filing within 14 days after the date of filing. Each
2162 notice shall be published in a newspaper of general circulation
2163 in the county in which the facility is located or is proposed to
2164 be located. Notwithstanding the provisions of chapter 50, for
2165 purposes of this section, a "newspaper of general circulation"
2166 shall be the newspaper within the county in which the
2167 installation or facility is proposed which has the largest daily
2168 circulation in that county and has its principal office in that
2169 county. If the newspaper with the largest daily circulation has
2170 its principal office outside the county, the notice shall appear
2171 in both the newspaper with the largest daily circulation in that
2172 county, and a newspaper authorized to publish legal notices in
2173 that county. The notice shall contain:
2174 (a) The name of the applicant and a brief description of
2175 the project and its location.
2176 (b) The location of the application file and when it is
2177 available for public inspection.
2178
2179 The notice shall be prepared by the applicant and shall comply
2180 with the following format:
2181
2182 Notice of Application
2183
2184 The Department of Environmental Protection announces receipt of

2185 an application for a permit from (name of applicant) to (brief
2186 description of project). This proposed project will be located
2187 at (location) in (county) (city).
2188
2189 This application is being processed and is available for public
2190 inspection during normal business hours, 8:00 a.m. to 5:00 p.m.,
2191 Monday through Friday, except legal holidays, at (name and
2192 address of office).
2193
2194 (13) A permit for the construction, modification, or
2195 operation of a hazardous waste facility which initially was
2196 issued under authority of this section, may not be transferred
2197 by the permittee to any other entity, except in conformity with
2198 the requirements of this subsection.
2199 (a) At least 30 days prior to the sale or legal transfer
2200 of a permitted facility, the permittee shall file with the
2201 department an application for transfer of the permits on such
2202 form as the department shall establish by rule. The form must be
2203 completed with the notarized signatures of both the transferring
2204 permittee and the proposed permittee.
2205 (b) The department shall approve the transfer of a permit
2206 unless it determines that the proposed permittee has not
2207 provided reasonable assurances that the proposed permittee has
2208 the administrative, technical, and financial capability to
2209 properly satisfy the requirements and conditions of the permit,
2210 as determined by department rule. The determination shall be
2211 limited solely to the ability of the proposed permittee to
2212 comply with the conditions of the existing permit, and it shall

2213 not concern the adequacy of the permit conditions. If the
2214 department proposes to deny the transfer, it shall provide both
2215 the transferring permittee and the proposed permittee a written
2216 objection to such transfer together with notice of a right to
2217 request a proceeding on such determination under chapter 120.
2218 (c) Within 90 days after receiving a properly completed
2219 application for transfer of permit, the department shall issue a
2220 final determination. The department may toll the time for making
2221 a determination on the transfer by notifying both the
2222 transferring permittee and the proposed permittee that
2223 additional information is required to adequately review the
2224 transfer request. Such notification shall be served within 30
2225 days after receipt of an application for transfer of permit,
2226 completed pursuant to paragraph (a). However, the failure of the
2227 department to approve or deny within the 90-day time period does
2228 not result in the automatic approval or denial of the transfer.
2229 If the department fails to approve or deny the transfer within
2230 the 90-day period, the applicant may petition for a writ of
2231 mandamus to compel the department to act consistently with
2232 applicable regulatory requirements.
2233 (d) The transferring permittee is encouraged to apply for
2234 a permit transfer well in advance of the sale or legal transfer
2235 of a permitted facility. However, the transfer or the permit
2236 shall not be effective prior to the sale or legal transfer of
2237 the facility.
2238 (e) Until the transfer of the permit is approved by the
2239 department, the transferring permittee and any other person
2240 constructing, operating, or maintaining the permitted facility

2241 shall be liable for compliance with the terms of the permit.
2242 Nothing in this section shall relieve the transferring permittee
2243 of liability for corrective actions that may be required as a
2244 result of any violations occurring prior to the legal transfer
2245 of the permit.
2246 Section 25. Subsection (2) of section 403.7226, Florida
2247 Statutes, is amended to read:
2248 403.7226 Technical assistance by the department.--The
2249 department shall:
2250 (2) Identify short-term needs and long-term needs for
2251 hazardous waste management for the state on the basis of the
2252 information gathered through the local hazardous waste
2253 management assessments and other information from state and
2254 federal regulatory agencies and sources. The state needs
2255 assessment must be ongoing and must be updated when new data
2256 concerning waste generation and waste management technologies
2257 become available. ~~The department shall annually send a copy of~~
2258 ~~this assessment to the Governor and to the Legislature.~~
2259 Section 26. Subsection (3) of section 403.724, Florida
2260 Statutes, is amended to read:
2261 403.724 Financial responsibility.--
2262 (3) The amount of financial responsibility required shall
2263 be approved by the department upon each issuance, renewal, or
2264 modification of a hazardous waste facility authorization ~~permit~~.
2265 Such factors as inflation rates and changes in operation may be
2266 considered when approving financial responsibility for the
2267 duration of the authorization ~~permit~~. The Office of Insurance
2268 Regulation of the Department of Financial Services ~~Commission~~

2269 shall be available to assist the department in making this
2270 determination. In approving or modifying the amount of financial
2271 responsibility, the department shall consider:
2272 (a) The amount and type of hazardous waste involved;
2273 (b) The probable damage to human health and the
2274 environment;
2275 (c) The danger and probable damage to private and public
2276 property near the facility;
2277 (d) The probable time that the hazardous waste and
2278 facility involved will endanger the public health, safety, and
2279 welfare or the environment; and
2280 (e) The probable costs of properly closing the facility
2281 and performing corrective action.
2282 Section 27. Section 403.7255, Florida Statutes, is amended
2283 to read:
2284 403.7255 Placement of signs ~~Department to adopt rules~~.--
2285 (1) ~~The department shall adopt rules which establish~~
2286 ~~requirements and procedures for the placement of~~ Signs must be
2287 placed by the owner or operator at ~~sites which may have been~~
2288 ~~contaminated by hazardous wastes. Sites shall include~~ any site
2289 in the state which ~~that~~ is listed or proposed for listing on the
2290 Superfund Site List of the United States Environmental
2291 Protection Agency or any site identified by the department as a
2292 ~~suspected or confirmed contaminated~~ site contaminated by
2293 hazardous waste where there is ~~may be~~ a risk of exposure to the
2294 public. The requirements of this section shall not apply to
2295 sites reported under ss. 376.3071 and 376.3072. The department
2296 shall establish requirements and procedures for the placement of

2297 signs, and may do so in rules, permits, orders, or other
2298 authorizations. The authorization ~~rules~~ shall establish the
2299 appropriate size for such signs, which size shall be no smaller
2300 than 2 feet by 2 feet, and shall provide in clearly legible
2301 print appropriate warning language for the waste or other
2302 materials at the site and a telephone number which may be called
2303 for further information.
2304 (2) Violations of this act are punishable as provided in
2305 s. 403.161(4).
2306 (3) The provisions of this act are independent of and
2307 cumulative to any other requirements and remedies in this
2308 chapter or chapter 376, or any rules promulgated thereunder.
2309 Section 28. Subsection (5) of section 403.726, Florida
2310 Statutes, is amended to read:
2311 403.726 Abatement of imminent hazard caused by hazardous
2312 substance.--
2313 (5) The department may issue a permit or order requiring
2314 prompt abatement of an imminent hazard.
2315 Section 29. Subsection (8) of section 403.7265, Florida
2316 Statutes, is amended to read:
2317 403.7265 Local hazardous waste collection program.--
2318 (8) The department has the authority to establish an
2319 additional local project grant program enabling a local
2320 hazardous waste collection center grantee to receive funding for
2321 unique projects that improve the collection and lower the
2322 incidence of improper management of conditionally exempt or
2323 household hazardous waste. Eligible local governments may
2324 receive up to $50,000 in grant funds for these unique and

2325 innovative projects, provided they match 25 percent of the grant
2326 amount. If the department finds that the project has statewide
2327 applicability and immediate benefits to other local hazardous
2328 waste collection programs in the state, matching funds are not
2329 required. This grant will not count toward the $100,000 maximum
2330 grant amount for development of a collection center.
2331 Section 30. Sections 403.7075, 403.756, 403.78, 403.781,
2332 403.782, 403.783, 403.784, 403.7841, 403.7842, 403.785, 403.786,
2333 403.787, 403.7871, 403.7872, 403.7873, 403.788, 403.7881,
2334 403.789, 403.7891, 403.7892, 403.7893, and 403.7895, Florida
2335 Statutes, are repealed.
2336 Section 31. This act shall take effect July 1, 2006.

Bill No. **7133**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative Mayfield offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Between lines 2335 and 2336 insert:
7 Section 31. Section 403.885, Florida Statutes, is amended
8 to read:
9 403.885 ~~Stormwater management; wastewater management; and~~
10 ~~Water Restoration;~~ Water Projects Grant Program.--
11 (1) The Department of Environmental Protection shall
12 administer a grant program to use funds transferred pursuant to
13 s. 212.20 to the Ecosystem Management and Restoration Trust Fund
14 or other moneys as appropriated by the Legislature for
15 stormwater management, wastewater management, ~~and~~ water
16 restoration ~~project grants~~ and other water projects as
17 specifically appropriated by the Legislature. Eligible
18 recipients of such grants include counties, municipalities,
19 water management districts, and special districts that have
20 legal responsibilities for water quality improvement, water
21 management, storm water management, wastewater management, and

22 lake and river water restoration projects. ~~Drinking water~~
23 ~~projects are not eligible for funding pursuant to this section.~~
24 (2) The grant program shall provide for the evaluation of
25 annual grant proposals. The department shall evaluate such
26 proposals to determine if they:
27 (a) Protect public health and the environment.
28 (b) Implement plans developed pursuant to the Surface
29 Water Improvement and Management Act created in part IV of
30 chapter 373, other water restoration plans required by law,
31 management plans prepared pursuant to s. 403.067, or other plans
32 adopted by local government for water quality improvement and
33 water restoration.
34 ~~(3) In addition to meeting the criteria in subsection (2),~~
35 ~~annual grant proposals must also meet the following~~
36 ~~requirements:~~
37 ~~(a) An application for a stormwater management project may~~
38 ~~be funded only if the application is approved by the water~~
39 ~~management district with jurisdiction in the project area.~~
40 ~~District approval must be based on a determination that the~~
41 ~~project provides a benefit to a priority water body.~~
42 ~~(b) Except as provided in paragraph (c), an application~~
43 ~~for a wastewater management project may be funded only if:~~
44 ~~1. The project has been funded previously through a line~~
45 ~~item in the General Appropriations Act; and~~
46 ~~2. The project is under construction.~~
47 ~~(c) An application for a wastewater management project~~
48 ~~that would qualify as a water pollution control project and~~
49 ~~activity in s. 403.1838 may be funded only if the project~~
50 ~~sponsor has submitted an application to the department for~~
51 ~~funding pursuant to that section.~~

52 ~~(4) All project applicants must provide local matching~~
53 ~~funds as follows:~~
54 ~~(a) An applicant for state funding of a stormwater~~
55 ~~management project shall provide local matching funds equal to~~
56 ~~at least 50 percent of the total cost of the project; and~~
57 ~~(b) An applicant for state funding of a wastewater~~
58 ~~management project shall provide matching funds equal to at~~
59 ~~least 25 percent of the total cost of the project.~~
60
61 ~~The requirement for matching funds may be waived if the~~
62 ~~applicant is a financially disadvantaged small local government~~
63 ~~as defined in subsection (5).~~
64 ~~(5) Each fiscal year, at least 20 percent of the funds~~
65 ~~available pursuant to this section shall be used for projects to~~
66 ~~assist financially disadvantaged small local governments. For~~
67 ~~purposes of this section, the term "financially disadvantaged~~
68 ~~small local government" means a municipality having a population~~
69 ~~of 7,500 or less, a county having a population of 35,000 or~~
70 ~~less, according to the latest decennial census and a per capita~~
71 ~~annual income less than the state per capita annual income as~~
72 ~~determined by the United States Department of Commerce, or a~~
73 ~~county in an area designated by the Governor as a rural area of~~
74 ~~critical economic concern pursuant to s. 288.0656. Grants made~~
75 ~~to these eligible local governments shall not require matching~~
76 ~~local funds.~~
77 ~~(6) Each year, stormwater management and wastewater~~
78 ~~management projects submitted for funding through the~~
79 ~~legislative process shall be submitted to the department by the~~
80 ~~appropriate fiscal committees of the House of Representatives~~
81 ~~and the Senate. The department shall review the projects and~~

82 ~~must provide each fiscal committee with a list of projects that~~
83 ~~appear to meet the eligibility requirements under this grant~~
84 ~~program.~~
85
86
87 ========== T I T L E A M E N D M E N T ==========
88 On line 77 after the semicolon insert:
89 amending 403.885, F.S.; revising requirements relating to the
90 Department of Environmental Protection's water project grants
91 program;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	10 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee		Davis	Dixon
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within1,900 feet of infected or exposed trees.

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

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

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

The bill directs DACS to relocate foundation source trees maintained by the Division of Plant Industry to protective sites outside of the commercial citrus growing region. It also preempts the removal and destruction of citrus plants to the state and provides a date certain after which compensation claims for the Shade Dade and Shade Florida programs will no longer be honored.

The bill provides authorization to spend existing funds from the Contracts and Grants Trust Fund to relocate the Citrus Budwood facilities for protection against citrus diseases. It also provides for appropriations of $10.2 million from the Agriculture Emergency Eradication Trust Fund and $16.7 million from the Contracts and Grants Trust Fund. The effective date of this bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within1,900 feet of infected or exposed trees.

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

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

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

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

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

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

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

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

Effects of Proposed Changes

The bill dismantles the current eradication plan codified in statute and directs DACS to implement a comprehensive citrus health plan to minimize the impact of citrus pests and diseases to production and allow for Florida to market its citrus to other states and countries.

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

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

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

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

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

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

The bill provides that claims for compensation under the Shade Dade or Shade Florida programs must be filed with DACS not later than December 31, 2007. After that date, all unfiled claims will expire.

And lastly, the bill appropriates to DACS $10.2 million from the Agriculture Emergency Eradication Trust Fund and $16.7 million from the Contracts and Grants Trust Fund for implementation of the program in the bill.

C. SECTION DIRECTORY:

Section 1: Amending s. 581.184, F.S.; directs the Department of Agriculture and Consumer Services (DACS) to implement a comprehensive citrus health plan; eliminates the authority of DACS to remove and destroy citrus trees infected with citrus canker; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and posting of certain conforming orders; and, requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process.

Section 2: Creating s. 581.1843, F.S.; provides requirements relating to the propagation and distribution of citrus effective January 1, 2007; provides rule-making authority to DACS; provides exemption of certain citrus from provisions of this section; requires DACS to establish regulated areas around the perimeter of commercial citrus nurseries; provides conditions for regulated areas; preempts regulation of removal or destruction of citrus plants to the state; directs DACS to relocate certain citrus trees maintained by the Division of Plant Industry; and, authorizes expenditure of funds from designated trust fund.

Section 3: Amending s. 581.1845, F.S.; revises the terms of the citrus canker eradication compensation program.

Section 4: Amending s. 120.80, F.S.; deletes a cross reference.

Section 5: Amending s. 348.0008, F.S.; deletes a cross reference.

Section 6: Amending s. 933.02, F.S.; amending a cross reference.

Section 7: Amending s. 933.40, F.S.; deletes a cross reference.

Section 8: Providing an appropriation.

Section 9: Providing an effective date of on upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

	FY 06-07
Citrus Health Plan	
Agricultural Emergency Eradication Trust Fund	10,220,920
Contracts and Grants Trust Fund	16,706,310
	$26,927,230
Citrus Budwood facilities relocation	
Contracts and Grants Trust Fund	$2,594,690

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to citrus disease management; amending s.
3 581.184, F.S; requiring the Department of Agriculture and
4 Consumer Services to implement a citrus health plan for
5 certain purposes; eliminating the authority of the
6 department to remove and destroy certain citrus trees;
7 deleting definitions and provisions relating to immediate
8 final orders, notice to property owners, rulemaking
9 authority, and the posting of certain orders, to conform;
10 requiring certain law enforcement officers to maintain
11 order under certain circumstances involving the citrus
12 canker disease management process; creating s. 581.1843,
13 F.S.; making it unlawful to propagate certain citrus
14 nursery stock on or after January 1, 2007, at sites and
15 under certain conditions not approved by the department;
16 providing exceptions; providing rulemaking authority;
17 specifying regulation of certain varieties of citrus
18 plants; providing exceptions; requiring the department to
19 establish certain regulated areas around commercial citrus
20 nurseries; providing exceptions; providing for notice to
21 property owners by immediate final order prior to removal
22 of certain citrus trees; providing an appeal process for
23 an immediate final order; providing for preemption to the
24 state to regulate the removal and destruction of certain
25 citrus plants; requiring the department to relocate
26 certain trees to certain locations; amending s. 581.1845,
27 F.S.; requiring certain compensation claims to be filed by
28 December 31, 2007; providing for the expiration of

29 compensation claims not filed prior to January 1, 2008;
30 amending ss. 120.80, 348.0008, 933.02, and 933.40, F.S.;
31 deleting provisions and cross-references, to conform;
32 providing appropriations; providing an effective date.
33
34 Be It Enacted by the Legislature of the State of Florida:
35
36 Section 1. Section 581.184, Florida Statutes, is amended
37 to read:
38 581.184 Adoption of rules; citrus disease management
39 ~~canker eradication; voluntary destruction agreements~~.--
40 (1) The department shall adopt by rule, pursuant to ss.
41 120.536(1) and 120.54, and implement a comprehensive citrus
42 health plan to minimize the impact of exotic citrus pests and
43 diseases to citrus production and to allow for the orderly
44 marketing of citrus fruit in other states and countries. ~~As used~~
45 ~~in this section, the term:~~
46 ~~(a) "Infected or infested" means citrus trees harboring~~
47 ~~the citrus canker bacteria and exhibiting visible symptoms of~~
48 ~~the disease.~~
49 ~~(b) "Exposed to infection" means citrus trees located~~
50 ~~within 1,900 feet of an infected tree.~~
51 ~~(2)(a) The department shall remove and destroy all~~
52 ~~infected citrus trees and all citrus trees exposed to infection.~~
53 ~~The department may destroy, by chipping, trees removed pursuant~~
54 ~~to this section. Notice of the removal of such trees, by~~
55 ~~immediate final order, shall be provided to the owner of the~~
56 ~~property on which such trees are located. An immediate final~~

57 ~~order issued by the department pursuant to this section shall~~
58 ~~notify the property owner that the citrus trees that are the~~
59 ~~subject of the immediate final order will be removed and~~
60 ~~destroyed unless the property owner, no later than 10 days after~~
61 ~~delivery of the immediate final order pursuant to subsection~~
62 ~~(3), requests and obtains a stay of the immediate final order~~
63 ~~from the district court of appeal with jurisdiction to review~~
64 ~~such requests. The property owner shall not be required to seek~~
65 ~~a stay of the immediate final order by the department prior to~~
66 ~~seeking the stay from the district court of appeal.~~
67 (2) ~~(b)~~ Regulation of the removal or destruction of citrus
68 trees pursuant to this section is hereby preempted to the state.
69 No county, municipal, or other local ordinance or other
70 regulation that would otherwise impose requirements,
71 restrictions, or conditions upon the department or its
72 contractors with respect to the removal or destruction of citrus
73 trees pursuant to this section shall be enforceable against the
74 department or its contractors.
75 ~~(3) Any immediate final order issued by the department~~
76 ~~pursuant to this section:~~
77 ~~(a) May be delivered in person, by certified mail, or by~~
78 ~~attaching the order to a conspicuous place on the property on~~
79 ~~which a citrus tree to be removed is located.~~
80 ~~(b) Is not required to be adopted by the department as a~~
81 ~~rule.~~
82 ~~(4) Simultaneously with the delivery of an immediate final~~
83 ~~order, the department shall also provide the following~~
84 ~~information to a property owner:~~

85 ~~(a) The physical location of the infected tree which has~~
86 ~~necessitated removal and destruction of the property owner's~~
87 ~~tree.~~
88 ~~(b) The diagnostic report that resulted in the~~
89 ~~determination that the infected tree is infected with the citrus~~
90 ~~canker.~~
91 (3) ~~(5)~~ The department shall ~~is directed to~~ adopt rules,
92 pursuant to ss. 120.536(1) and 120.54, regarding the conditions
93 under which citrus plants~~, other than those that are infected or~~
94 ~~exposed to infection,~~ can be grown, moved, and planted in this
95 state as may be necessary for the ~~eradication,~~ control~~,~~ or
96 prevention of the dissemination of citrus diseases ~~canker~~. Such
97 rules shall be in effect for any period during which, in the
98 judgment of the Commissioner of Agriculture, there is the threat
99 of the spread of citrus diseases ~~canker disease~~ in the state.
100 ~~Such rules may provide for the conduct of any activity regulated~~
101 ~~by such rules subject to an agreement by persons wishing to~~
102 ~~engage in such activity to voluntarily destroy, at their own~~
103 ~~expense, citrus plants declared by the department to be~~
104 ~~imminently dangerous by reason of being infected or infested~~
105 ~~with citrus canker or exposed to infection and likely to~~
106 ~~communicate same. The terms of such agreement may also require~~
107 ~~the destruction of healthy plants under specified conditions.~~
108 ~~Any such destruction shall be done after reasonable notice in a~~
109 ~~manner pursuant to and under conditions set forth in the~~
110 ~~agreement. Such agreements may include releases and waivers of~~
111 ~~liability and may require the agreement of other persons.~~

112 (4) ~~(6)~~ The department shall develop by rule, pursuant to
113 ss. 120.536(1) and 120.54, a statewide program of
114 decontamination to prevent and limit the spread of citrus canker
115 disease. Such program shall address the application of
116 decontamination procedures and practices to all citrus plants
117 and plant products, vehicles, equipment, machinery, tools,
118 objects, and persons who could in any way spread or aid in the
119 spreading of citrus canker in this state. In order to prevent
120 contamination of soil and water, such rules shall be developed
121 in consultation with the Department of Environmental Protection.
122 The department may develop compliance and other agreements which
123 it determines can aid in the carrying out of the purposes of
124 this section, and enter into such agreements with any person or
125 entity.
126 (5) ~~(7)~~ Owners or ~~and/or~~ operators of nonproduction
127 vehicles and equipment shall follow the department guidelines
128 for citrus canker decontamination effective June 15, 2000. ~~The~~
129 ~~department shall publish the guidelines in the Florida~~
130 ~~Administrative Weekly and on the department Internet website.~~
131 ~~The guidelines shall be posted no later than May 15, 2000.~~
132 (6) ~~(8)~~ Notwithstanding any provision of law, the
133 Department of Environmental Protection is not authorized to
134 institute proceedings against any person under the provisions of
135 s. 376.307(5) to recover any costs or damages associated with
136 contamination of soil or water, or the evaluation, assessment,
137 or remediation of contamination of soil or water, including
138 sampling, analysis, and restoration of soil or potable water
139 supplies, where the contamination of soil or water is determined

140 to be the result of a program of decontamination to prevent and
141 limit the spread of citrus canker disease pursuant to rules
142 developed under this section. This subsection does not limit
143 regulatory authority under a federally delegated or approved
144 program.
145 (7) ~~(9)~~ Upon request of the department, the sheriff or
146 chief law enforcement officer of each county in the state shall
147 provide assistance in obtaining access to private property for
148 the purpose of enforcing the provisions of this section. The
149 sheriff or chief law enforcement officer shall be responsible
150 for maintaining public order during the citrus disease
151 management ~~eradication~~ process and protecting the safety of
152 department employees, representatives, and agents charged with
153 implementing and enforcing the provisions of this section. The
154 department may reimburse the sheriff or chief law enforcement
155 officer for the reasonable costs of implementing the provisions
156 of this subsection.
157 ~~(10) Posting of an order on the property on which citrus~~
158 ~~trees are to be cut pursuant to the citrus canker eradication~~
159 ~~program shall meet the notice requirement of s. 120.569(1).~~
160 Section 2. Section 581.1843, Florida Statutes, is created
161 to read:
162 581.1843 Citrus nursery stock propagation and production
163 and the establishment of regulated areas around citrus
164 nurseries.--
165 (1) As used in this section the term "commercial citrus
166 grove" means a solid set planting of 40 or more citrus trees.
167 (2) Effective January 1, 2007, it is unlawful for any

168 person to propagate for sale or movement any citrus nursery
169 stock that was not propagated or grown on a site and within a
170 protective structure approved by the department and that is not
171 at least 1 mile away from commercial citrus groves. A citrus
172 nursery registered with the department prior to April 1, 2006,
173 shall not be required to comply with the 1-mile setback from
174 commercial citrus groves while continuously operating at the
175 same location for which it was registered. However, the nursery
176 shall be required to propagate citrus within a protective
177 structure approved by the department. Effective January 1, 2008,
178 it shall be unlawful to distribute any citrus nursery stock that
179 was not produced in a protective structure approved by the
180 department.
181 (3) The department shall adopt rules pursuant to ss.
182 120.536(1) and 120.54 that set forth the conditions under which
183 citrus nursery stock can be propagated, grown, sold, or moved
184 and the specifications for the approved site and protective
185 structure.
186 (4) Under the provisions of this chapter, the department
187 shall adopt rules that are consistent with scientific findings
188 and recommendations of the Citrus Budwood Technical Advisory
189 Committee to regulate all genera of the Rutaceous subfamilies
190 Aurantioideae, Rutoideae, and Toddalioideae that pose a threat
191 of introducing or spreading a citrus plant pest.
192 (5) The department shall establish regulated areas around
193 the perimeter of commercial citrus nurseries that were
194 established on sites after April 1, 2006, not to exceed a radius
195 of 1 mile. The planting of citrus in an established regulated

196 area is prohibited. The planting of citrus within a 1-mile
197 radius of commercial citrus nurseries that were established on
198 sites prior to April 1, 2006, must be approved by the
199 department. Citrus plants planted within a regulated area prior
200 to the establishment of the regulated area may remain in the
201 regulated area unless the department determines the citrus
202 plants to be infected or infested with citrus canker or citrus
203 greening. The department shall require the removal of infected
204 or infested citrus, nonapproved planted citrus, and citrus that
205 has sprouted by natural means in regulated areas. The property
206 owner shall be responsible for the removal of citrus planted
207 without proper approval. Notice of the removal of citrus trees,
208 by immediate final order of the department, shall be provided to
209 the owner of the property on which the trees are located. An
210 immediate final order issued by the department under this
211 section shall notify the property owner that the citrus trees,
212 which are the subject of the immediate final order, must be
213 removed and destroyed unless the property owner, no later than
214 10 days after delivery of the immediate final order, requests
215 and obtains a stay of the immediate final order from the
216 district court of appeal with jurisdiction to review such
217 requests. The property owner shall not be required to seek a
218 stay from the department of the immediate final order prior to
219 seeking a stay from the district court of appeal.
220 (6) Regulation of the removal or destruction of citrus
221 plants under this section is preempted to the state. No county,
222 municipal, or other local ordinance or other regulation that
223 would otherwise impose requirements, restrictions, or conditions

224 upon the department or its contractors with respect to the
225 removal or destruction of citrus trees under this section shall
226 be enforceable against the department or its contractors.
227 (7) The department shall relocate foundation source trees
228 maintained by the Division of Plant Industry from various
229 locations, including those in Dundee and Winter Haven, to
230 protective structures at the Division of Forestry nursery in
231 Chiefland or to other protective sites located a minimum of 10
232 miles from any commercial citrus grove. The department is
233 authorized to expend existing funds from its Contracts and
234 Grants Trust Fund for this purpose.
235 Section 3. Subsection (6) is added to section 581.1845,
236 Florida Statutes, to read:
237 581.1845 Citrus canker eradication; compensation to
238 homeowners whose trees have been removed.--
239 (6) Any claim for compensation under this section or under
240 the Shade Dade or Shade Florida programs must be filed with the
241 department no later than December 31, 2007. Effective January 1,
242 2008, all unfiled claims shall expire.
243 Section 4. Paragraph (c) of subsection (2) of section
244 120.80, Florida Statutes, is amended to read:
245 120.80 Exceptions and special requirements; agencies.--
246 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--
247 ~~(c) The provisions of ss. 120.54 and 120.56 shall not~~
248 ~~apply to any statement or action by the department in~~
249 ~~furtherance of its duties pursuant to s. 581.184(2).~~
250 Section 5. Subsection (2) of section 348.0008, Florida
251 Statutes, is amended to read:

252 348.0008 Acquisition of lands and property.--
253 (2) An authority and its authorized agents, contractors,
254 and employees are authorized to enter upon any lands, waters,
255 and premises, upon giving reasonable notice to the landowner,
256 for the purpose of making surveys, soundings, drillings,
257 appraisals, environmental assessments including phase I and
258 phase II environmental surveys, archaeological assessments, and
259 such other examinations as are necessary for the acquisition of
260 private or public property and property rights, including rights
261 of access, air, view, and light, by gift, devise, purchase, or
262 condemnation by eminent domain proceedings or as are necessary
263 for the authority to perform its duties and functions; and any
264 such entry shall not be deemed a trespass or an entry that would
265 constitute a taking in an eminent domain proceeding. An
266 expressway authority shall make reimbursement for any actual
267 damage to such lands, water, and premises as a result of such
268 activities. Any entry authorized by this subsection shall be in
269 compliance with the premises protections and landowner liability
270 provisions contained in s. ~~ss.~~ 472.029 ~~and 581.184~~.
271 Section 6. Section 933.02, Florida Statutes, is amended to
272 read:
273 933.02 Grounds for issuance of search warrant.--Upon
274 proper affidavits being made, a search warrant may be issued
275 under the provisions of this chapter upon any of the following
276 grounds:
277 (1) When the property shall have been stolen or embezzled
278 in violation of law;
279 (2) When any property shall have been used:

280 (a) As a means to commit any crime;~~,~~
281 (b) In connection with gambling, gambling implements and
282 appliances;~~,~~ or
283 (c) In violation of s. 847.011 or other laws in reference
284 to obscene prints and literature;
285 (3) When any property constitutes evidence relevant to
286 proving that a felony has been committed;
287 (4) When any property is being held or possessed:
288 (a) In violation of any of the laws prohibiting the
289 manufacture, sale, and transportation of intoxicating liquors;~~,~~
290 ~~or~~
291 (b) In violation of the fish and game laws;~~, or~~
292 (c) In violation of the laws relative to food and drug;~~,~~
293 or
294 (d) In violation of the laws relative to citrus disease ~~a~~
295 ~~quarantine for citrus canker~~ pursuant to ss. ~~s.~~ 581.184 and
296 581.1845~~, or~~
297 ~~(e) Which may be inspected, treated, seized, or destroyed~~
298 ~~pursuant to s. 581.184~~; or
299 (5) When the laws in relation to cruelty to animals, as
300 provided in chapter 828, have been or are violated in any
301 particular building or place.
302
303 This section also applies to any papers or documents used as a
304 means of or in aid of the commission of any offense against the
305 laws of the state.

306 Section 7. Paragraph (f) of subsection (1) and paragraph
307 (b) of subsection (3) of section 933.40, Florida Statutes, are
308 amended to read:
309 933.40 Agriculture warrants.--
310 (1) As used in this section:
311 (f) "Plant pest" means any plant pest, noxious weed, or
312 arthropod declared a nuisance by the department pursuant to s.
313 581.031(6)~~, or any plant infected or exposed to infection as~~
314 ~~defined in s. 581.184(1)~~.
315 (3) An agriculture warrant shall be issued only upon
316 probable cause. In determining the existence of probable cause
317 for the issuance of one or more agriculture warrants, one or
318 more of the following findings may be sufficient to support a
319 determination of probable cause:
320 (b) Under all of the circumstances set forth in the
321 affidavit, there is a fair probability the property subject to
322 the agriculture warrant:
323 1. Contains a plant pest;
324 2. Is located in an area which may reasonably be suspected
325 of being infested or infected with a plant pest due to its
326 proximity to a known infestation, or if it is reasonably exposed
327 to infestation;
328 ~~3. Is located in a Section in which the department has~~
329 ~~diagnosed the presence of one or more plants infected with~~
330 ~~citrus canker as defined in s. 581.184(1)(a) or is located in a~~
331 ~~Section adjacent thereto;~~

332 3.~~4.~~ Contains animals affected with any animal pest or
333 which have been exposed to and are liable to spread the animal
334 pest; or
335 4.~~5.~~ Contains any other property that is liable to convey
336 an animal pest.
337 Section 8. The sum of $10,220,920 is appropriated from the
338 Agricultural Emergency Eradication Trust Fund to the Department
339 of Agriculture and Consumer Services, and the sum of $16,706,310
340 is appropriated from the Contracts and Grants Trust Fund to the
341 Department of Agriculture and Consumer Services, for the 2006-
342 2007 fiscal year to implement the provisions of ss. 581.184,
343 581.1843, and 581.1845, Florida Statutes, as amended by this
344 act.
345 Section 9. This act shall take effect upon becoming a law.

Bill No. **HB 7159**

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: Agriculture & Environment
2 Appropriations
3 Representative Poppell offered the following:
4
5 **Amendment (with title amendment)**
6 Between lines 35 and 36, insert:
7 Section 1. Subsection (7) of section 193.461, Florida
8 Statutes, is amended to read:
9 193.461 Agricultural lands; classification and assessment;
10 mandated eradication or quarantine program.--
11 (7) Lands classified for assessment purposes as
12 agricultural lands which are taken out of production by any
13 state or federal eradication or quarantine program shall
14 continue to be classified as agricultural lands for the duration
15 of such program <u>or successor programs</u>. Lands under these
16 programs which are converted to fallow, or otherwise nonincome-
17 producing uses shall continue to be classified as agricultural
18 lands and shall be assessed at a de minimis value of no more
19 than $50 per acre, on a single year assessment methodology;
20 however, lands converted to other income-producing agricultural
21 uses permissible under such programs shall be assessed pursuant

22 to this section. Land under a mandated eradication or quarantine
23 program which is diverted from an agricultural to a
24 nonagricultural use shall be assessed under the provisions of s.
25 193.011.
26
27 ========== T I T L E A M E N D M E N T ==========
28 Between lines 2 and 3, insert:
29 193.461, F.S.; revising criteria for land taken out of
30 production relating to agricultural; amending s.

Bill No. **7159**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Mayfield offered the following:
4
5 **Amendment**
6 Remove line(s) 235-242 and insert:
7
8 Section 3. Subsection (1) of section 581.1845, Florida
9 Statutes, is amended and a new subsection (6) is added to that
10 section to read:
11 581.1845 Citrus canker eradication; compensation to
12 homeowners whose trees have been removed.—
13 (1) The Department of Agriculture and Consumer Services
14 shall provide compensation to eligible homeowners whose citrus
15 trees have been removed under a citrus canker eradication
16 program. Funds to pay this compensation may be derived from both
17 state and federal matching sources and shall be specifically
18 appropriated by law. Eligible homeowners shall be compensated
19 subject to the availability of ~~appropriated~~ funds <u>specifically</u>
20 <u>appropriated in fiscal year 2006-2007 or prior fiscal years for</u>
21 <u>such purpose.</u>

22 (6) Any claim for compensation under this section or under
23 the Shade Dade or Shade Florida programs must be filed with the
24 department no later than December 31, 2007. Effective January 1,
25 2008, all unfiled claims shall expire.
26 Section 4. Section 581.1845, Florida Statutes, as amended
27 by this act, is repealed effective July 1, 2008.
28

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **7159**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Mayfield offered the following:
4
5 **Amendment (with title amendment)**
6 Remove line(s) 337-344 and insert:
7
8 Section 8. Subsection (3) of section 11.062, Florida
9 Statutes, is created to read:
10 11.062 Use of state funds for lobbying prohibited;
11 penalty.-
12 (3) Notwithstanding any other provision of law, the
13 prohibitions contained in this section shall not apply to a
14 state agency established pursuant to s. 20.29, provided that no
15 general revenue funds are expended for lobbying purposes.
16
17
18 ========== T I T L E A M E N D M E N T ==========
19 Remove line(s) 32 and insert:
20 amending s. 11.062; providing an effective date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	7 Y, 0 N	Kliner	Kliner
1) Agriculture & Environment Appropriations Committee		Dixon	Dixon
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, the bill provides that law governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with the act. The bill appropriates the sum of $2,740,000 for the 2006-07 fiscal year from the 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 extent, surface water management projects in agricultural settings, including isolated wetlands.

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

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

Stormwater

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

Isolated wetlands

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

Effect of Proposed Changes

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

None

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 district to incorporate certain exemptions
17 and general permits in joint rules; exempting certain
18 activities and structures from permitting requirements;
19 requiring the department and the district to enter into an
20 operating agreement for the implementation of certain
21 provisions; requiring the district to be responsible for
22 the regulation and local delegation of certain activities;
23 providing for continuing operation of certain earlier law;
24 repealing certain provisions upon the adoption of rules;
25 providing effect for failure to fund in any given fiscal
26 year; providing an appropriation for operational expenses
27 of the district; repealing s. 4 of ch. 2005-273, Laws of
28 Florida, and s. 32 of ch. 2005-71, Laws of Florida, which
29 specified dates certain for the repeal of certain

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

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

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

117 annual report required by s. 373.036(7), all cash donations
118 accepted under subparagraph 1. during the preceding water
119 management district fiscal year for wetland mitigation purposes.
120 The report shall exclude those contributions pursuant to s.
121 373.4137. The report shall include a description of the endorsed
122 mitigation projects and, except for projects governed by s.
123 373.4135(6), shall address, as applicable, success criteria,
124 project implementation status and timeframe, monitoring, long-
125 term management, provisions for preservation, and full cost
126 accounting.
127 3. If the applicant is unable to meet water quality
128 standards because existing ambient water quality does not meet
129 standards, the governing board or the department shall consider
130 mitigation measures proposed by or acceptable to the applicant
131 that cause net improvement of the water quality in the receiving
132 body of water for those parameters which do not meet standards.
133 4. If mitigation requirements imposed by a local government
134 for surface water and wetland impacts of an activity regulated
135 under this part cannot be reconciled with mitigation requirements
136 approved under a permit for the same activity issued under this
137 part, including application of the uniform wetland mitigation
138 assessment method adopted pursuant to subsection (18), the
139 mitigation requirements for surface water and wetland impacts
140 shall be controlled by the permit issued under this part.
141 Section 2. Section 373.4145, Florida Statutes, is reenacted
142 and amended to read:
143 373.4145 ~~Interim~~ Part IV permitting program <u>within the</u>
144 <u>geographical jurisdiction of</u> ~~for~~ the Northwest Florida Water
145 Management District.--

146 (1) Within the geographical jurisdiction of the Northwest
147 Florida Water Management District, taking into consideration the
148 differing physical and natural characteristics of the area, the
149 department and the district shall ~~the permitting authority of the~~
150 ~~department under this part shall consist solely of the following,~~
151 ~~notwithstanding the rule adoption deadline in s. 373.414(9)~~:
152 (a) Jointly develop rules to regulate the construction,
153 operation, alteration, maintenance, abandonment, and removal of
154 stormwater management systems. The department shall adopt the
155 rules no later than January 1, 2007; the district may implement
156 rules prior to adoption pursuant to s. 120.54. Until the
157 stormwater management system rules take effect, chapter 62-25 ~~17-~~
158 ~~25~~, Florida Administrative Code, shall remain in full force and
159 effect~~,~~ and shall be implemented by the department.
160 Notwithstanding the provisions of this section, chapter 62-25 ~~17-~~
161 ~~25~~, Florida Administrative Code, may be amended by the department
162 as necessary to comply with any requirements of state or federal
163 laws or regulations, or any condition imposed by a federal
164 program, or as a requirement for receipt of federal grant funds.
165 The intent of the rules created under this paragraph is to update
166 existing stormwater rules, to improve water quality and water
167 quality protection, and to apply the least restrictive measures
168 and criteria adopted in other water management district rules.
169 (b) Jointly develop rules for the management and storage of
170 surface waters under this part. The department shall adopt the
171 rules no later than July 1, 2008; the district may implement
172 rules prior to adoption pursuant to s. 120.54. Until the rules
173 for the management and storage of surface waters under this part
174 take effect, rules adopted pursuant to the authority of ss.

175 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as
176 amended, in effect prior to July 1, 1994, shall remain in full
177 force and effect~~,~~ and shall be implemented by the department.
178 However, the department is authorized to establish additional
179 exemptions and general permits for dredging and filling, if such
180 exemptions or general permits do not allow significant adverse
181 impacts to occur individually or cumulatively. However, for the
182 purpose of chapter 62-312 ~~17-312~~, Florida Administrative Code,
183 the landward extent of surface waters of the state identified in
184 rule 62-312.030(2) ~~17-312.030(2)~~, Florida Administrative Code,
185 shall be determined in accordance with the methodology in rules
186 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,
187 Florida Administrative Code~~, as ratified in s. 373.4211, upon the~~
188 ~~effective date of such ratified methodology~~. In implementing s.
189 373.421(2), the department shall determine the extent of those
190 surface waters and wetlands within the regulatory authority of
191 the department as described in this paragraph. At the request of
192 the petitioner, the department shall also determine the extent of
193 surface waters and wetlands that ~~which~~ can be delineated by the
194 methodology ratified in s. 373.4211, but that ~~which~~ are not
195 subject to the regulatory authority of the department as
196 described in this paragraph. The intent of the rules created
197 under this paragraph is to improve the management and storage of
198 surface waters with minimal impact on property interests and to
199 consider the rural nature of the district relative to the
200 permitting thresholds and requirements.
201 (c) Pursue streamlining of the federal and state wetland
202 permitting programs pursuant to ss. 373.4143 and 373.4144.

203 (d) Implement, to the maximum extent possible, streamlining
204 measures, including electronic permitting, field permitting, and
205 certification programs for activities with minimal individual or
206 cumulative impact, informal wetland determinations, and other
207 similar measures.
208 (2) ~~(c)~~ The department may implement chapter 40A-4, Florida
209 Administrative Code, in effect prior to July 1, 1994, pursuant to
210 an interagency agreement with the Northwest Florida Water
211 Management District adopted under s. 373.046(4).
212 (3) The rules adopted under subsection (1), as applicable,
213 shall:
214 (a) Incorporate the exemptions in ss. 373.406 and
215 403.813(2).
216 (b) Incorporate the provisions of rule 62-341.475(1)(f),
217 Florida Administrative Code, applicable to single-family homes
218 located entirely or partially within wholly owned, isolated
219 wetlands.
220 (c) Exempt from the notice and permitting requirements of
221 this part the construction or private use of a single-family
222 dwelling unit, duplex, triplex, or quadruplex that:
223 1. Is not part of a larger common plan of development or
224 sale proposed by the applicant.
225 2. Does not involve wetlands or other surface waters.
226 (d) Incorporate the exemptions and general permits that
227 have been enacted by rule under s. 373.414(9) by the department
228 and other water management districts and the general permits
229 authorized by s. 403.814.

230 (e) Exempt from permitting requirements activities and
231 structures that are exempt from permitting in any other water
232 management district.
233 (f) Exempt from permitting requirements the resurfacing or
234 paving of unpaved roads.
235 (g) Exempt from permitting requirements the alteration of
236 wholly owned, artificially created surface waters that do not
237 connect to any waters of the state.
238 ~~(2) The authority of the Northwest Florida Water Management~~
239 ~~District to implement this part or to implement any authority~~
240 ~~pursuant to delegation by the department shall not be affected by~~
241 ~~this section. The rule adoption deadline in s. 373.414(9) shall~~
242 ~~not apply to said district.~~
243 (4) ~~(3)~~ The department and the ~~division of permitting~~
244 ~~responsibilities in s. 373.046(4) shall not apply within the~~
245 ~~geographical jurisdiction of the~~ Northwest Florida Water
246 Management District shall enter into an operating agreement under
247 s. 373.046 to effectively implement this section and provide the
248 district with the amount of responsibility under the agreement
249 that resources allow, including, at a minimum, the responsibility
250 for regulating silviculture and agriculture. The operating
251 agreement shall encourage local delegation of the
252 responsibilities under this section pursuant to s. 373.441.
253 (5) The provisions of s. 373.414(11)-(14) shall not apply
254 to rules adopted under this section.
255 (6) The following activities shall continue to be governed
256 by the provisions of s. 373.4145, Florida Statutes 1994:
257 (a) The operation and routine custodial maintenance of
258 activities legally in existence before the effective date of the

259 rules adopted under subsection (1), as long as the terms and
260 conditions of the permit, exemption, or other authorization for
261 such activities continue to be met.
262 (b) The activities approved in a permit issued pursuant to
263 s. 373.4145, Florida Statutes 1994, and the review of activities
264 proposed in applications received before the effective date of
265 the rules adopted under subsection (1), as applicable. This
266 paragraph shall also apply to any modification of the plans,
267 terms, and conditions of a permit issued pursuant to s. 373.4145,
268 Florida Statutes 1994, that lessens the environmental impact,
269 except that any such modification shall not extend the time limit
270 for construction beyond 2 additional years.
271
272 This subsection shall not apply to any activity that is altered,
273 modified, expanded, abandoned, or removed after adoption of the
274 applicable rules under subsection (1).
275 (7) Unless the petitioner elects to apply rule 62-340,
276 Florida Administrative Code, to all wetlands, the delineation of
277 the landward extent of wetlands and other surface waters for
278 petitions filed under s. 373.421(2) prior to the effective date
279 of the rules adopted under paragraph (1)(b) shall continue to be
280 determined in accordance with rule 62-312.030(2), Florida
281 Administrative Code, in effect July 1, 1994, and rules 62-340.100
282 through 62-340.600, Florida Administrative Code, as ratified in
283 s. 373.4211.
284 ~~(4) If the United States Environmental Protection Agency~~
285 ~~approves an assumption of the federal program to regulate the~~
286 ~~discharge of dredged or fill material by the department or the~~
287 ~~water management districts, or both, pursuant to s. 404 of the~~

288 ~~Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.~~
289 ~~1251 et seq.; the United States Army Corps of Engineers issues~~
290 ~~one or more state programmatic general permits under the~~
291 ~~referenced statutes; or the United States Environmental~~
292 ~~Protection Agency or the United States Corps of Engineers~~
293 ~~approves any other delegation of regulatory authority under the~~
294 ~~referenced statutes, then the department may implement any~~
295 ~~permitting authority granted in this part within the Northwest~~
296 ~~Florida Water Management District which is prescribed as a~~
297 ~~condition of granting such assumption, general permit, or~~
298 ~~delegation.~~
299 (8) ~~(5)~~ Within the geographical jurisdiction of the
300 Northwest Florida Water Management District, the methodology for
301 determining the landward extent of surface waters of the state
302 under chapter 403 in effect prior to the effective date of the
303 methodology ratified in s. 373.4211 shall apply to:
304 (a) Activities permitted under the rules adopted pursuant
305 to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
306 1983, as amended, or that ~~which~~ were exempted from regulation
307 under such rules, prior to July 1, 1994, and that ~~which~~ were
308 permitted under chapter 62-25 ~~17-25~~, Florida Administrative Code,
309 or exempt from chapter 62-25 ~~17-25~~, Florida Administrative Code,
310 prior to July 1, 1994, provided:
311 1. An activity authorized by such permits is conducted in
312 accordance with the plans, terms, and conditions of such permits.
313 2. An activity exempted from the permitting requirements of
314 the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement
315 to the Florida Statutes 1983, as amended, or chapter 62-25 ~~17-25~~,
316 Florida Administrative Code, is:

317 a. Commenced prior to July 1, 1994, and completed by July
318 1, 1999;
319 b. Conducted in accordance with a plan depicting the
320 activity that ~~which~~ has been submitted to and approved for
321 construction by the department, the appropriate local government,
322 the United States Army Corps of Engineers, or the Northwest
323 Florida Water Management District; and
324 c. Conducted in accordance with the terms of the exemption.
325 (b) An activity within the boundaries of a valid
326 jurisdictional declaratory statement issued pursuant to s.
327 403.914, 1984 Supplement to the Florida Statutes 1983, as
328 amended, or the rules adopted thereunder, in response to a
329 petition received prior to June 1, 1994.
330 (c) Any modification of a permitted or exempt activity as
331 described in paragraph (a) that ~~which~~ does not constitute a
332 substantial modification or that ~~which~~ lessens the environmental
333 impact of such permitted or exempt activity. For the purposes of
334 this section, a substantial modification is one that ~~which~~ is
335 reasonably expected to lead to substantially different
336 environmental impacts.
337 (d) Applications for activities permitted under the rules
338 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
339 1983 Florida Statutes, as amended, that ~~which~~ were pending on
340 June 15, 1994, unless the application elects to have applied the
341 delineation methodology ratified in s. 373.4211.
342 (9) Subsections (2) and (8) are repealed on the effective
343 date of the rules adopted under subsection (1).
344 (10) In the event that the Legislature in any given fiscal
345 year fails to fund and staff the environmental resource

346 permitting program established under this section, the
347 environmental resource permitting program shall be suspended for
348 that fiscal year and the rules and statutes governing development
349 activity in the district shall revert to those in effect on April
350 1, 2006, until such time as funding and staffing levels are
351 restored consistent with this section.
352 ~~(6) Subsections (1), (2), (3), and (4) shall be repealed~~
353 ~~effective July 1, 2006.~~
354 Section 3. The sum of $2,740,000 is appropriated from the
355 Water Management Lands Trust Fund to the Department of
356 Environmental Protection for the 2006-2007 fiscal year for the
357 operational expenditures of the Northwest Florida Water
358 Management District pursuant to s. 373.4145, Florida Statutes, as
359 amended by this act.
360 Section 4. Section 4 of chapter 2005-273, Laws of Florida,
361 and section 32 of chapter 2005-71, Laws of Florida, are repealed.
362 Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7163**

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: Agriculture and Environment
2 Appropriations Committee
3 Representative Mayfield offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove line(s) 355 and insert:
7 General Revenue Fund to the Department of
8
9

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Changing Appropriation to GR.doc