Agriculture and Environment Appropriations Committee

Tuesday, April 4, 2006

4:00 pm

306 House Office Building

AMENDED

Allan Bense
Speaker

Stan Mayfield
Chair

Florida House of Representatives

Fiscal Council
Agriculture & Environment Appropriations Committee

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Agenda for
Date: April 4, 2006
Location: 306 House Office Building, Tallahassee, FL
Time: 4:00 PM

I. Call to Order

II. Roll Call

III. HB 733 CS by Dean

IV. HB 889 CS by Machek

V. HB 1007 CS by Proctor

VI. HB 1015 CS by Pickens

VII. HB 1155 by Evers

VIII. HB 1621 by Mayfield

IX. Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Background

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

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

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

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

National Association of State Boating Law Administrators Model Motorboat Noise Act

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

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

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

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

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

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

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

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

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

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

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

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

Florida Airboat Associations

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

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

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

Current Law

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

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

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

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

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

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

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

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

Airboats and Noise Issues

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

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

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

Code of Ethics

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

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

Noise Study

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

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

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

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

The findings from the research project were as follows:

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

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

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

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

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

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

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

EFFECT OF PROPOSED CHANGES

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

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

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

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

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

C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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

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

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

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

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

CHAMBER ACTION

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

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Present subsection (37) of section 327.02,
28 Florida Statutes, is amended, subsections (1) through (22) are
29 renumbered as subsections (2) through (23), respectively,
30 subsections (23) through (38) are renumbered as subsections (25)
31 through (40), respectively, and new subsections (1) and (24) are
32 added to that section, to read:
33 327.02 Definitions of terms used in this chapter and in
34 chapter 328.--As used in this chapter and in chapter 328, unless
35 the context clearly requires a different meaning, the term:
36 (1) "Airboat" means a vessel, designed for use in shallow
37 waters, powered by an internal combustion engine with an
38 airplane-type propeller mounted above the stern used to push air
39 across a set of rudders.
40 (24) "Muffler" means an automotive-style sound-suppression
41 device or system designed to effectively abate the sound of
42 exhaust gases emitted from an internal combustion engine and
43 prevent excessive sound when installed on such engine.
44 (39) ~~(37)~~ "Vessel" is synonymous with boat as referenced in
45 s. 1(b), Art. VII of the State Constitution and includes every
46 description of watercraft, barge, and airboat ~~air boat~~, other
47 than a seaplane on the water, used or capable of being used as a
48 means of transportation on water.
49 Section 2. Section 327.391, Florida Statutes, is created
50 to read:
51 327.391 Airboats regulated.--

52 (1) The exhaust of every internal combustion engine used
53 on any airboat operated on the waters of this state shall be
54 provided with an automotive-style factory muffler, underwater
55 exhaust, or other manufactured device capable of adequately
56 muffling the sound of the exhaust of the engine as described in
57 s. 327.02(24). The use of cutouts or flex pipe is prohibited,
58 except as provided in subsection (4). Any person who violates
59 this subsection commits a noncriminal infraction, punishable as
60 provided in s. 327.73(1).
61 (2) An airboat operator cited for an infraction of this
62 section shall not operate the airboat until a muffler as defined
63 in s. 327.02 is installed. A second or any subsequent violation
64 of this section is a second degree misdemeanor, punishable as
65 provided in s. 775.083.
66 (3) An airboat may not operate on the waters of the state
67 unless it is equipped with a mast or flagpole bearing a flag at
68 a height of at least 10 feet above the deck. The flag must be
69 square or rectangular, at least 10 inches by 12 inches in size,
70 international orange in color, and displayed so that the
71 visibility of the flag is not obscured in any direction. Any
72 person who violates this subsection commits a noncriminal
73 infraction, punishable as provided in s. 327.73(1).
74 (4) This section does not apply to a performer engaged in
75 a professional exhibition or a person preparing to participate
76 or participating in a regatta, race, marine parade, tournament,
77 or exhibition held in compliance with s. 327.48.
78 Section 3. Paragraphs (v) and (w) are added to subsection
79 (1) of section 327.73, Florida Statutes, to read:

80 327.73 Noncriminal infractions.--
81 (1) Violations of the following provisions of the vessel
82 laws of this state are noncriminal infractions:
83 (v) Section 327.391(1), relating to requirement for an
84 adequate muffler on an airboat.
85 (w) Section 327.391(3), relating to display of a flag on
86 an airboat.
87
88 Any person cited for a violation of any such provision shall be
89 deemed to be charged with a noncriminal infraction, shall be
90 cited for such an infraction, and shall be cited to appear
91 before the county court. The civil penalty for any such
92 infraction is $50, except as otherwise provided in this section.
93 Any person who fails to appear or otherwise properly respond to
94 a uniform boating citation shall, in addition to the charge
95 relating to the violation of the boating laws of this state, be
96 charged with the offense of failing to respond to such citation
97 and, upon conviction, be guilty of a misdemeanor of the second
98 degree, punishable as provided in s. 775.082 or s. 775.083. A
99 written warning to this effect shall be provided at the time
100 such uniform boating citation is issued.
101 Section 4. Subsection (1) of section 327.731, Florida
102 Statutes, is amended to read:
103 327.731 Mandatory education for violators.--
104 (1) Every person convicted of a criminal violation of this
105 chapter, every person convicted of a noncriminal infraction
106 under this chapter if the infraction resulted in a reportable
107 boating accident, and every person convicted of two noncriminal

108 infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p),
109 and (s)-(w) ~~(s)-(u)~~, said infractions occurring within a 12-
110 month period, must:
111 (a) Enroll in, attend, and successfully complete, at his
112 or her own expense, a boating safety course that meets minimum
113 standards established by the commission by rule; however, the
114 commission may provide by rule pursuant to chapter 120 for
115 waivers of the attendance requirement for violators residing in
116 areas where classroom presentation of the course is not
117 available;
118 (b) File with the commission within 90 days proof of
119 successful completion of the course;
120 (c) Refrain from operating a vessel until he or she has
121 filed the proof of successful completion of the course with the
122 commission.
123
124 Any person who has successfully completed an approved boating
125 course shall be exempt from these provisions upon showing proof
126 to the commission as specified in paragraph (b).
127 Section 5. Paragraphs (d) and (e) of subsection (5) of
128 section 320.08, Florida Statutes, are amended to read:
129 320.08 License taxes.--Except as otherwise provided
130 herein, there are hereby levied and imposed annual license taxes
131 for the operation of motor vehicles, mopeds, motorized bicycles
132 as defined in s. 316.003(2), and mobile homes, as defined in s.
133 320.01, which shall be paid to and collected by the department
134 or its agent upon the registration or renewal of registration of
135 the following:

136 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
137 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--
138 (d) A wrecker, as defined in s. 320.01(40), which is used
139 to tow a vessel as defined in s. 327.02(39) ~~(36)~~, a disabled,
140 abandoned, stolen-recovered, or impounded motor vehicle as
141 defined in s. 320.01(38), or a replacement motor vehicle as
142 defined in s. 320.01(39): $30 flat.
143 (e) A wrecker, as defined in s. 320.01(40), which is used
144 to tow any motor vehicle, regardless of whether or not such
145 motor vehicle is a disabled motor vehicle as defined in s.
146 320.01(38), a replacement motor vehicle as defined in s.
147 320.01(39), a vessel as defined in s. 327.02(39) ~~(36)~~, or any
148 other cargo, as follows:
149 1. Gross vehicle weight of 10,000 pounds or more, but less
150 than 15,000 pounds: $87 flat.
151 2. Gross vehicle weight of 15,000 pounds or more, but less
152 than 20,000 pounds: $131 flat.
153 3. Gross vehicle weight of 20,000 pounds or more, but less
154 than 26,000 pounds: $186 flat.
155 4. Gross vehicle weight of 26,000 pounds or more, but less
156 than 35,000 pounds: $240 flat.
157 5. Gross vehicle weight of 35,000 pounds or more, but less
158 than 44,000 pounds: $300 flat.
159 6. Gross vehicle weight of 44,000 pounds or more, but less
160 than 55,000 pounds: $572 flat.
161 7. Gross vehicle weight of 55,000 pounds or more, but less
162 than 62,000 pounds: $678 flat.

163 8. Gross vehicle weight of 62,000 pounds or more, but less
164 than 72,000 pounds: $800 flat.
165 9. Gross vehicle weight of 72,000 pounds or more: $979
166 flat.
167 Section 6. Subsection (4) of section 328.17, Florida
168 Statutes, is amended to read:
169 328.17 Nonjudicial sale of vessels.--
170 (4) A marina, as defined in s. 327.02(20) ~~(19)~~, shall have
171 a possessory lien upon any vessel for storage fees, dockage
172 fees, repairs, improvements, or other work-related storage
173 charges, and for expenses necessary for preservation of the
174 vessel or expenses reasonably incurred in the sale or other
175 disposition of the vessel. The possessory lien shall attach as
176 of the date the vessel is brought to the marina, or as of the
177 date the vessel first occupies rental space at the marina
178 facility. However, in the event of default, the marina must give
179 notice to persons who hold perfected security interests against
180 the vessel under the Uniform Commercial Code in which the owner
181 is named as the debtor.
182 Section 7. Subsection (2) of section 342.07, Florida
183 Statutes, is amended to read:
184 342.07 Recreational and commercial working waterfronts;
185 legislative findings; definitions.--
186 (2) As used in this section, the term "recreational and
187 commercial working waterfront" means a parcel or parcels of real
188 property that provide access for water-dependent commercial
189 activities or provide access for the public to the navigable
190 waters of the state. Recreational and commercial working

191 waterfronts require direct access to or a location on, over, or
192 adjacent to a navigable body of water. The term includes water-
193 dependent facilities that are open to the public and offer
194 public access by vessels to the waters of the state or that are
195 support facilities for recreational, commercial, research, or
196 governmental vessels. These facilities include docks, wharfs,
197 lifts, wet and dry marinas, boat ramps, boat hauling and repair
198 facilities, commercial fishing facilities, boat construction
199 facilities, and other support structures over the water. As used
200 in this section, the term "vessel" has the same meaning as in s.
201 327.02(39) ~~(37)~~. Seaports are excluded from the definition.
202 Section 8. Paragraph (a) of subsection (10) of section
203 616.242, Florida Statutes, is amended to read:
204 616.242 Safety standards for amusement rides.--
205 (10) EXEMPTIONS.--
206 (a) This section does not apply to:
207 1. Permanent facilities that employ at least 1,000 full-
208 time employees and that maintain full-time, in-house safety
209 inspectors. Furthermore, the permanent facilities must file an
210 affidavit of the annual inspection with the department, on a
211 form prescribed by rule of the department. Additionally, the
212 Department of Agriculture and Consumer Services may consult
213 annually with the permanent facilities regarding industry safety
214 programs.
215 2. Any playground operated by a school, local government,
216 or business licensed under chapter 509, if the playground is an
217 incidental amenity and the operating entity is not primarily

218 engaged in providing amusement, pleasure, thrills, or
219 excitement.
220 3. Museums or other institutions principally devoted to
221 the exhibition of products of agriculture, industry, education,
222 science, religion, or the arts.
223 4. Conventions or trade shows for the sale or exhibit of
224 amusement rides if there are a minimum of 15 amusement rides on
225 display or exhibition, and if any operation of such amusement
226 rides is limited to the registered attendees of the convention
227 or trade show.
228 5. Skating rinks, arcades, lazer or paint ball war games,
229 bowling alleys, miniature golf courses, mechanical bulls,
230 inflatable rides, trampolines, ball crawls, exercise equipment,
231 jet skis, paddle boats, airboats ~~air boats~~, helicopters,
232 airplanes, parasails, hot air or helium balloons whether
233 tethered or untethered, theatres, batting cages, stationary
234 spring-mounted fixtures, rider-propelled merry-go-rounds, games,
235 side shows, live animal rides, or live animal shows.
236 6. Go-karts operated in competitive sporting events if
237 participation is not open to the public.
238 7. Nonmotorized playground equipment that is not required
239 to have a manager.
240 8. Coin-actuated amusement rides designed to be operated
241 by depositing coins, tokens, credit cards, debit cards, bills,
242 or other cash money and which are not required to have a
243 manager, and which have a capacity of six persons or less.
244 9. Facilities described in s. 549.09(1)(a) when such
245 facilities are operating cars, trucks, or motorcycles only.

246 10. Battery-powered cars or other vehicles that are
247 designed to be operated by children 7 years of age or under and
248 that cannot exceed a speed of 4 miles per hour.
249 11. Mechanically driven vehicles that pull train cars,
250 carts, wagons, or other similar vehicles, that are not confined
251 to a metal track or confined to an area but are steered by an
252 operator and do not exceed a speed of 4 miles per hour.
253 Section 9. Paragraph (b) of subsection (1) of section
254 713.78, Florida Statutes, is amended to read:
255 713.78 Liens for recovering, towing, or storing vehicles
256 and vessels.--
257 (1) For the purposes of this section, the term:
258 (b) "Vessel" means every description of watercraft, barge,
259 and airboat ~~air boat~~ used or capable of being used as a means of
260 transportation on water, other than a seaplane or a "documented
261 vessel" as defined in s. 327.02(9) ~~(8)~~.
262 Section 10. Paragraph (b) of subsection (1) of section
263 715.07, Florida Statutes, is amended to read:
264 715.07 Vehicles or vessels parked on private property;
265 towing.--
266 (1) As used in this section, the term:
267 (b) "Vessel" means every description of watercraft, barge,
268 and airboat used or capable of being used as a means of
269 transportation on water, other than a seaplane or a "documented
270 vessel" as defined in s. 327.02(9) ~~(8)~~.
271 Section 11. This act shall take effect October 1, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Agriculture and Environment
2 Appropriations Committee
3 Representative(s) Dean offered the following:
4
5 **Amendment**
6 Remove line(s) 52-73 and insert:
7
8 (1) The exhaust of every internal combustion engine used on
9 any airboat operated on the waters of this state shall be
10 provided with an automotive-style factory muffler, underwater
11 exhaust, or other manufactured device capable of adequately
12 muffling the sound of the exhaust of the engine as described in
13 s. 327.02(24). The use of cutouts or flex pipe as the sole
14 source of muffling is prohibited, except as provided in
15 subsection (4). Any person who violates this subsection commits
16 a noncriminal infraction, punishable as provided in s.
17 327.73(1).
18 (2) An airboat operator cited for an infraction of this
19 section shall not operate the airboat until a muffler as defined
20 in s. 327.02 is installed. A second violation of this provision

21 shall result in a fine of $250, a third shall result in a fine
22 of $500 and any subsequent violation shall be a fine of $500.
23 (3) An airboat may not operate on the waters of the state
24 unless it is equipped with a mast or flagpole bearing a flag at
25 a height of at least 10 feet above the lowest portion of the
26 vessel. The flag must be square or rectangular, at least 10
27 inches by 12 inches in size, international orange in color, and
28 displayed so that the visibility of the flag is not obscured in
29 any direction. Any person who violates this subsection commits a
30 noncriminal infraction, punishable as provided in s. 327.73(1).
31
32

HB 889 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 889 CS Fran Reich Aquatic Preserve
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	9 Y, 0 N, w/CS	Winker	Lotspeich
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District (SFWMD) as the Fran Reich Preserve. The bill directs the SFWMD to erect suitable markers designating the Fran Reich Preserve.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

The Site 1 Impoundment Project is a joint project between the U.S. Army Corps of Engineers and the South Florida Water Management District as part of the Comprehensive Everglades Restoration Plan. The purpose of the project, which is located in Palm Beach County, is to supplement water deliveries to the Hillsboro Canal by capturing and storing excess water currently discharged to the Intracoastal Waterway. The supplemental water deliveries are intended to reduce the demands upon Lake Okeechobee.

As part of the project, an impoundment pool will also provide groundwater recharge, reduce seepage from adjacent natural areas, and prevent saltwater intrusion by releasing impounded water back into the Hillsboro Canal when conditions dictate. Some measure of flood protection may also be provided by the project along with water quality improvements. The project includes canal and structure relocations, canal conveyance improvements, water control structures, and an aboveground impoundment with a total storage capacity of 13,280 acre-feet located in the Hillsboro Canal Basin in southern Palm Beach County.

Fran Reich was born in New York City in 1914. After graduating from Queens College, Fran worked in a law office and married her husband Allan. She raised a family and continued to work and be active in numerous educational and civic group issues. In 1978, Fran and her husband moved to Boca Raton, Florida where she founded the West Boca Community Council in 1980. Fran served as the Council's President and Board Chair. Fran served on many local and county advisory committees including the Infrastructure Task Force, Traffic Performance Standards, Ethics Committee, and the Land Use Advisory Board.

Fran's many accomplishments include:

- Bringing a new middle school to West Boca.
- Leading the fight against a West Boca landfill and incinerator by convincing the County that there was no need for such facilities.
- Defeating a proposed airport in West Boca.
- Assisting in the establishment of a West Boca Medical Center.
- Advocating for parks, libraries, schools, post offices, fire stations, and youth activity centers in West Boca.

With Fran's leadership, the West Boca Community Council fought the establishment by the County of a landfill on the southeastern edge of the Loxahachee Wildlife Refuge and what has become the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan.

Fran died in February 2005.

C. SECTION DIRECTORY:

Section 1: Designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan as the Fran Reich Preserve; directs the South Florida Water Management District to erect suitable markers.

Section 2: Provides that the act becomes effective on 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Department of Environmental Protection staff, designating the Site 1 Project water body as an aquatic preserve would place numerous restrictions upon the water body and would make it difficult to use it for the intended purpose of the Site 1 Project, which is essentially a water holding pond or an impoundment area. Staff recommends that the phrase "aquatic preserve" be removed from the bill and another appropriate designation be used.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted the bill with an amendment which removed the word "aquatic" from the bill.

CHAMBER ACTION

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1 The Water & Natural Resources Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the Fran Reich Preserve; designating
8 the Site 1 Impoundment project of the Comprehensive
9 Everglades Restoration Plan sponsored by the South Florida
10 Water Management District as the Fran Reich Preserve;
11 directing the South Florida Water Management District to
12 erect suitable markers; providing an effective date.
13
14 WHEREAS, Fran Reich founded the West Boca Community Council
15 and proudly served on the council as President, Chairman of the
16 Board, and Chairman Emeritus, and
17 WHEREAS, Fran Reich was a dedicated activist who worked
18 diligently to protect the communities of South Florida and to
19 improve the lives of others, and
20 WHEREAS, Fran Reich successfully led the victory that
21 protected and preserved the Loxahatchee Wildlife Refuge, and
22 WHEREAS, such effort and commitment generated a legacy of
23 community awareness and involvement, NOW, THEREFORE,

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Fran Reich Preserve designated; South Florida
28 Water Management District to erect suitable markers.--
29 (1) The Site 1 Impoundment project of the Comprehensive
30 Everglades Restoration Plan sponsored by the South Florida Water
31 Management District is designated the "Fran Reich Preserve."
32 (2) The South Florida Water Management District is
33 directed to erect suitable markers designating the Fran Reich
34 Preserve as described in subsection (1).
35 Section 2. This act shall take effect July 1, 2006.

HB 1007 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1007 CS State Parks
SPONSOR(S): Proctor
TIED BILLS: **IDEN./SIM. BILLS:** SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee	8 Y, 0 N, w/CS	Marino	Cutchins
2) Tourism Committee	5 Y, 0 N	Langston	McDonald
3) Agriculture & Environment Appropriations Committee		Dixon	Dixon
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The Committee Substitute for House Bill 1007 allows free, state park admission to active members of the Florida National Guard and their spouses and minor children upon submission of a valid active Florida National Guard member or dependent identification card.

The revenue impact to the Division of Recreation and Parks (division) is estimated to be a loss of approximately $100,621. The division, however, estimated a higher impact in its analysis.

The impact to the state from lost sales tax revenue from annual pass sales is indeterminate and expected to be minimal.

This committee substitute takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – The Committee Substitute for House Bill 1007 benefits families of Florida National Guard members by allowing them to visit state parks together for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under the Florida Department of Environmental Protection, the division operates and maintains 159 state parks, which cover 723,852 acres, with operating and capital budgets totaling around $105 million[1]. Park revenues during that time were approximately $36.77 million. Park admittance fees pay for about 35% of the operating costs of the state parks. Most of the rest of the revenues come from the Land Acquisition Trust Fund which is funded primarily from documentary stamp taxes.

In 2004-2005, 17.3 million people visited Florida's state parks, down from a record attendance year in 2003-2004 of 19.1 million[2]. The division attributed the decrease in attendance to the effects of the above normal hurricane activity that year.

Entrance or admission fees to state parks is charged per carload (up to eight people), and the amount of the fee is based upon the park to which visitors are entering. Park admission fees can range from $3 to $5. Individuals may purchase an annual pass if they visit the parks frequently at a cost of $43.40 (sales tax included), and families may purchase an annual pass for $85.80 (sales tax included). Approximately 31,900[3] annual passes were sold in 2004-2005.

The division states that the "Florida Park Service already allows the military free (state) park admission when requested[4]." The division further confirmed that this "unwritten policy[5]" extends to all military personnel, which includes active duty, reservists, and National Guardsmen, and that the military personnel usually call ahead or show ID at the entry point in order to take advantage of this policy.

Effect of Proposed Changes:

The Committee Substitute for House Bill 1007 appears to codify part of an existing policy within the division by allowing active members of the Florida National Guard (FNG), and their spouses and minor children, free state park admission upon submission of a valid active FNG member or dependent identification card. This committee substitute does not affect active duty and reserve members of the armed forces who would continue to pay for park entrance or be able to take advantage of the "unwritten policy" stated above. This committee substitute does not waive fees that entrants would pay for services such as overnight parking or renting campsites.

This committee substitute takes effect July 1, 2006.

C. SECTION DIRECTORY:

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[1] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. Division of Recreation and Parks: Historical Data. February 23, 2006. Email on file with Committee on Military & Veteran Affairs.
[2] ib id.
[3] Communication with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. February 22, 2006. Email on file with Committee on Military & Veteran Affairs.
[4] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.
[5] Conversation with Bruce Deterding, Legislative Affairs Division of Recreation and Parks. March 10, 2006.

Section 1. Creates an undesignated section in the law that allows active members of the FNG, and their spouses and minor children, to gain entry to a state park without paying the admission fee upon submission of a valid active FNG member or dependent identification card.

Section 2. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential loss to the division, using a simple average method, is approximately $100,621 if every FNG individual or family generated four carloads a year.

The state may lose an indeterminate and minimal amount of sales tax from lost annual pass sales ($5.80 per family annual pass and $3.40 per individual annual pass).

Considering, however that the "unwritten policy" does exist, the actual revenue impact could be considerably lower.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A family of an active FNG member could save $85.80 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

An active FNG individual could save $43.40 (sales tax included) per year if they normally purchased an annual pass, or they could save $3, $4, or $5 per visit, depending on the park, if they were not on an annual plan.

D. FISCAL COMMENTS:

To calculate the $100,621 fiscal impact, staff assumes that:

- The unwritten policy does not exist; and
- The average revenue per visitor is $2.13, which was calculated by dividing total revenue ($36,766,200) in 2004-2005 by total visitors (17,296,273) in 2004-2005; and
- The number of unique FNG carloads corresponds to the current strength of the FNG (11,810[6]); and
- Each unique carload visits a state park four times in a year; and

[6] Conversation with Glenn Sutphin, Legislative Director Florida Department of Military Affairs. January 12, 2006.

- The percent of annual passes is negligible to the calculations, since if all 31,900 annual pass visitors made 20 trips (approximate number of trips necessary to gain full value of pass cost) to the parks that would only be about 3% of the total 17.3 million visitors.

Therefore, the number of unique carloads multiplied by four visits in a year multiplied by the average revenue per visitor equals approximately $100,621[7].

The division estimates a revenue impact of $1.2 million[8]. However, they assumed that the current FNG strength was 15,000 and that each FNG would be equivalent to the loss of the $80 family annual pass. Demographic analysis shows approximately 57.7% of FNG members have family responsibilities, so the remaining 42.3% would be more likely to purchase the $40 individual annual pass under the division's assumptions.

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 bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

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

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 15, 2006, the Committee on Military & Veteran Affairs adopted an amendment that requires the submission of a valid active FNG member or dependent identification card in order for a person or family to gain the free admission to a state park provided for in the bill. The committee then voted to report the committee substitute favorably by a vote of 8 to 0.

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[7] (11,810 x 4 x $2.13)

[8] Department of Environmental Protection. Draft Bill Analysis 2006: HB 1007. March 10, 2006. On file with Committee on Military & Veteran Affairs.

CHAMBER ACTION

The Military & Veteran Affairs Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to state parks; providing members of the Florida National Guard and certain relatives of such members free entrance to state parks; requiring presentation of certain identification as a condition for free entrance; providing an effective date.

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

Section 1. A person who is a member of the Florida National Guard, and the spouse and minor children of such a person, shall not be charged a fee for admission to a state park upon presentation of a valid, active Florida National Guard member or dependent identification card.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1015 CS Agricultural Economic Development
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N, w/CS	Kaiser	Reese
2) Agriculture & Environment Appropriations Committee		Davis	Dixon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1015 reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill stipulates the property must meet Greenbelt criteria, have been in agricultural production for the past five years and meet additional criteria. An agricultural enclave may not exceed 2,560 acres, unless the property has been determined to be urban or suburban by the Department of Community Affairs (DCA), in which case it may not exceed 5,120 acres. The bill exempts the CPA from certain rules of the DCA relating to urban sprawl.

The bill provides for good faith negotiations between the local government and landowner, with certain criteria to be met regarding the negotiations. Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA. If the landowner fails to negotiate in good faith, all DCA rules relating to urban sprawl apply to the CPA. The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. The bill requires the purchasing agency to allow the lease to remain in full force for the remainder of the lease term. Where consistent with the purposes for which the property was acquired, the purchasing agency must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of the purchase.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. Furthermore, the bill requires water management districts to notify agricultural applicants for consumptive use permits of the right to apply for permits valid for 20 years.

By July 1, 2007, the bill requires each water management district to enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in law.

The bill does not appear to have a fiscal impact requiring new state expenditures. The effective date of this legislation is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill creates a process for owners of agricultural enclaves to request comprehensive plan amendments allowing land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. Additionally, the bill reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act
Currently, s. 70.001, F.S., sets forth the Bert Harris Act, which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property. A 180-day time period is required between filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density. The bill reduces the time period from 180 days to 90 days.

Agricultural Enclaves
The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (act)[1] establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a plan, capital improvements, and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The act contains a special designation and specific provisions relating to an urban infill and redevelopment area. However, there is neither a designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The property must meet Greenbelt criteria and have been in agricultural production for the past five years. An agricultural enclave is defined as an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity'
- Has been in continuous use for bona fide agricultural purposes, as defined by statute[2] for a period of 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its perimeter by:
  - Property that has existing industrial, commercial, or residential development; or
  - Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

[1] ss. 163.3161-163.3244, F.S.
[2] s. 193.461, F.S.

- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local government or by a alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180, F.S.; and
- Does not exceed 2,560 acres, however, if the property has been determined to be urban or suburban by the state land planning agency, the parcel may not exceed 5,120 acres.

The bill provides for good faith negotiations between the local government and landowner. The negotiation period is set for 180 days following the date the local government receives an application for a CPA. The bill requires, within 30 days of receipt by the local government of the application, for the local government and landowner to agree, in writing, to a schedule for information submittal, public hearings, negotiations, and final action on the CPA. This schedule may only be changed with the written consent of the local government and the landowner. Compliance with the schedule in written agreement constitutes good faith negotiations.

Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA.[3] If the landowner fails to negotiate in good faith, all rules of the DCA relating to urban sprawl apply to the CPA.

The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

Land Acquisition

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation," and contains Florida's nationally recognized land acquisition programs:

- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands and to conserve and protect environmentally unique and irreplaceable lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever program. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sales of bonds. Each year for 10 years, the majority of $300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the Department of Agriculture and Consumer Services (DACS) received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than $3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program

[3] *Id.*

was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agricultural lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

The bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning
In the mid-1990's, when it became apparent that chief groundwater sources may not be sufficient to sustain Florida's population, the five water management districts were charged with developing regional water supply plans. Florida law [4] requires the plan to be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately-owned water utilities, multijurisdictional water supply entities, self-suppliers, and other affected and interested parties.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

Consumptive Use Permits
Water use permits can be issued to non-government individuals or entities for a period of up to 20 years, but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20 years.

Memorandum of Agreement for Agricultural Related Exemption
Section 373.406(2), F.S., provides an exemption to persons engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. The law further states such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

The bill establishes a process by which each water management district enters into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemption set forth in s. 373.406(2), F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S.; amending notice period for filing action.

Section 2: Amends s. 163.3162, F.S.; providing for owner of land classified as an agricultural enclave to apply for an amendment to the comprehensive plan; providing requirements relating to applications; and, exempting certain amendments from specific rules of the Department of Community Affairs under certain circumstances.

Section 3: Amends s. 163.3164, F.S.; providing a definition for agricultural enclave.

[4] s. 373.0361, F.S.

Section 4: Creates s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 5: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 6: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 7: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 8: Amending s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   Indeterminate. It is unknown whether this bill will require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services (DACS), this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 8 of the bill addresses the development of a memorandum of agreement between DACS and each water management district in which DACS would conduct a review to determine exemptions from existing statute. DACS states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

As currently drafted, section 163.3162(5)(c), F.S., dealing with the preemption for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area, is ambiguous as to legislative intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted two amendments to HB 1015. **Amendment 1** amended the procedure for applying for a comprehensive plan amendment, which is now the same for anyone seeking to establish an agricultural enclave. **Amendment 2** amended the definition of an "agricultural enclave" to have only one acreage designation rather than two.

CHAMBER ACTION

1 The Agriculture Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to agricultural economic development;
7 amending s. 70.001, F.S.; providing a deadline for an
8 owner of agricultural land to present a claim prior to
9 filing an action against a governmental entity regarding
10 private property rights; amending s. 163.3162, F.S.;
11 providing for application for an amendment to the local
12 government comprehensive plan by the owner of land that
13 meets certain provisions of the definition of an
14 agricultural enclave; providing requirements relating to
15 such applications; exempting certain amendments from
16 specified rules of the Department of Community Affairs
17 under certain circumstances; amending s. 163.3164, F.S.;
18 defining the term "agricultural enclave" for purposes of
19 the Local Government Comprehensive Planning and Land
20 Development Regulation Act; creating s. 259.047, F.S.;
21 providing requirements relating to the purchase of land on
22 which an agricultural lease exists; amending s. 373.0361,
23 F.S.; providing for recognition that alternative water

24 supply development options for agricultural self-suppliers
25 are limited; amending s. 373.2234, F.S.; conforming a
26 cross-reference; amending s. 373.236, F.S.; requiring
27 water management districts to inform landowners of the
28 option to obtain certain consumptive use permits; creating
29 s. 373.407, F.S.; providing for memoranda of agreement
30 regarding qualification for agricultural-related
31 exemptions; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Paragraphs (a) and (c) of subsection (4),
36 paragraph (a) of subsection (5), and paragraph (c) of subsection
37 (6) of section 70.001, Florida Statutes, are amended to read:
38 70.001 Private property rights protection.--
39 (4)(a) Not less than 180 days prior to filing an action
40 under this section against a governmental entity, a property
41 owner who seeks compensation under this section must present the
42 claim in writing to the head of the governmental entity<u>, except</u>
43 <u>that if the property is classified as agricultural pursuant to</u>
44 <u>s. 193.461, the notice period is 90 days</u>. The property owner
45 must submit, along with the claim, a bona fide, valid appraisal
46 that supports the claim and demonstrates the loss in fair market
47 value to the real property. If the action of government is the
48 culmination of a process that involves more than one
49 governmental entity, or if a complete resolution of all relevant
50 issues, in the view of the property owner or in the view of a
51 governmental entity to whom a claim is presented, requires the

52 active participation of more than one governmental entity, the
53 property owner shall present the claim as provided in this
54 section to each of the governmental entities.
55 (c) During the 90-day-notice period or the 180-day-notice
56 period, unless extended by agreement of the parties, the
57 governmental entity shall make a written settlement offer to
58 effectuate:
59 1. An adjustment of land development or permit standards
60 or other provisions controlling the development or use of land.
61 2. Increases or modifications in the density, intensity,
62 or use of areas of development.
63 3. The transfer of developmental rights.
64 4. Land swaps or exchanges.
65 5. Mitigation, including payments in lieu of onsite
66 mitigation.
67 6. Location on the least sensitive portion of the
68 property.
69 7. Conditioning the amount of development or use
70 permitted.
71 8. A requirement that issues be addressed on a more
72 comprehensive basis than a single proposed use or development.
73 9. Issuance of the development order, a variance, special
74 exception, or other extraordinary relief.
75 10. Purchase of the real property, or an interest therein,
76 by an appropriate governmental entity.
77 11. No changes to the action of the governmental entity.
78

79 If the property owner accepts the settlement offer, the
80 governmental entity may implement the settlement offer by
81 appropriate development agreement; by issuing a variance,
82 special exception, or other extraordinary relief; or by other
83 appropriate method, subject to paragraph (d).
84 (5)(a) During the 90-day-notice period or the 180-day-
85 notice period, unless a settlement offer is accepted by the
86 property owner, each of the governmental entities provided
87 notice pursuant to paragraph (4)(a) shall issue a written
88 ripeness decision identifying the allowable uses to which the
89 subject property may be put. The failure of the governmental
90 entity to issue a written ripeness decision during the
91 applicable 90-day-notice period or 180-day-notice period shall
92 be deemed to ripen the prior action of the governmental entity,
93 and shall operate as a ripeness decision that has been rejected
94 by the property owner. The ripeness decision, as a matter of
95 law, constitutes the last prerequisite to judicial review, and
96 the matter shall be deemed ripe or final for the purposes of the
97 judicial proceeding created by this section, notwithstanding the
98 availability of other administrative remedies.
99 (6)
100 (c)1. In any action filed pursuant to this section, the
101 property owner is entitled to recover reasonable costs and
102 attorney fees incurred by the property owner, from the
103 governmental entity or entities, according to their
104 proportionate share as determined by the court, from the date of
105 the filing of the circuit court action, if the property owner
106 prevails in the action and the court determines that the

107 settlement offer, including the ripeness decision, of the
108 governmental entity or entities did not constitute a bona fide
109 offer to the property owner which reasonably would have resolved
110 the claim, based upon the knowledge available to the
111 governmental entity or entities and the property owner during
112 the 90-day-notice period or the 180-day-notice period.
113 2. In any action filed pursuant to this section, the
114 governmental entity or entities are entitled to recover
115 reasonable costs and attorney fees incurred by the governmental
116 entity or entities from the date of the filing of the circuit
117 court action, if the governmental entity or entities prevail in
118 the action and the court determines that the property owner did
119 not accept a bona fide settlement offer, including the ripeness
120 decision, which reasonably would have resolved the claim fairly
121 to the property owner if the settlement offer had been accepted
122 by the property owner, based upon the knowledge available to the
123 governmental entity or entities and the property owner during
124 the 90-day-notice period or the 180-day-notice period.
125 3. The determination of total reasonable costs and
126 attorney fees pursuant to this paragraph shall be made by the
127 court and not by the jury. Any proposed settlement offer or any
128 proposed ripeness decision, except for the final written
129 settlement offer or the final written ripeness decision, and any
130 negotiations or rejections in regard to the formulation either
131 of the settlement offer or the ripeness decision, are
132 inadmissible in the subsequent proceeding established by this
133 section except for the purposes of the determination pursuant to
134 this paragraph.

135 Section 2. Subsection (5) is added to section 163.3162,
136 Florida Statutes, to read:
137 163.3162 Agricultural Lands and Practices Act.--
138 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The
139 owner of a parcel of land defined as an agricultural enclave
140 under s. 163.3164(33) may apply for an amendment to the local
141 government comprehensive plan pursuant to s. 163.3187. Such
142 amendment is not subject to rule 9J-5.006(5), Florida
143 Administrative Code, and may include land uses and intensities
144 of use that are consistent with the uses and intensities of use
145 of the industrial, commercial, or residential areas that
146 surround the parcel.
147 (a) The local government and the owner of a parcel of land
148 that is the subject of an application for an amendment shall
149 have 180 days following the date that the local government
150 receives an application to negotiate in good faith to reach
151 consensus on the land uses and intensities of use that are
152 consistent with the uses and intensities of use of the
153 industrial, commercial, or residential areas that surround the
154 parcel. Within 30 days after the local government's receipt of
155 such an application, the local government and owner must agree
156 in writing to a schedule for information submittal, public
157 hearings, negotiations, and final action on the amendment, which
158 schedule may thereafter be altered only with the written consent
159 of the local government and the owner. Compliance with the
160 schedule in the written agreement constitutes good-faith
161 negotiations for purposes of paragraph (c).

162 (b) Upon conclusion of good-faith negotiations under
163 paragraph (a), regardless of whether the local government and
164 owner reach consensus on the land uses and intensities of use
165 that are consistent with the uses and intensities of use of the
166 industrial, commercial, or residential areas that surround the
167 parcel, the amendment must be transmitted to the state land
168 planning agency for review pursuant to s. 163.3184. If the local
169 government fails to transmit the amendment within 180 days after
170 receipt of an application, the amendment must be immediately
171 transferred to the state land planning agency for such review at
172 the first available transmittal cycle. The state land planning
173 agency may not use any provision of rule 9J-5.006(5), Florida
174 Administrative Code, as a factor in determining compliance of an
175 amendment.
176 (c) If the owner fails to negotiate in good faith, rule
177 9J-5.006(5), Florida Administrative Code, shall apply throughout
178 the negotiation and amendment process.
179 (d) Nothing within this subsection relating to
180 agricultural enclaves shall preempt or replace any protection
181 currently existing for any property located within the
182 boundaries of the following areas:
183 1. The Wekiva Study Area, as described in s. 369.316; or
184 2. The Everglades Protection Area, as defined in s.
185 373.4592(2).
186 Section 3. Subsection (33) is added to section 163.3164,
187 Florida Statutes, to read:
188 163.3164 Local Government Comprehensive Planning and Land
189 Development Regulation Act; definitions.--As used in this act:

190 (33) "Agricultural enclave" means an unincorporated,
191 undeveloped parcel that:
192 (a) Is owned by a single person or entity;
193 (b) Has been in continuous use for bona fide agricultural
194 purposes, as defined by s. 193.461, for a period of 5 years
195 prior to the date of any comprehensive plan amendment
196 application;
197 (c) Is surrounded on at least 75 percent of its perimeter
198 by:
199 1. Property that has existing industrial, commercial, or
200 residential development; or
201 2. Property that the local government has designated, in
202 the local government's comprehensive plan, zoning map, and
203 future land use map, as land that is to be developed for
204 industrial, commercial, or residential purposes, and at least 75
205 percent of such property is existing industrial, commercial, or
206 residential development;
207 (d) Has public services, including water, wastewater,
208 transportation, schools, and recreation facilities, available or
209 such public services are scheduled to be provided by the local
210 government or by an alternative provider of local government
211 infrastructure consistent with applicable concurrency provisions
212 of s. 163.3180; and
213 (e) Does not exceed 2,560 acres; however, if the property
214 has been determined to be urban or suburban by the state land
215 planning agency, the parcel may not exceed 5,120 acres.
216 Section 4. Section 259.047, Florida Statutes, is created
217 to read:

218 259.047 Acquisition of land on which an agricultural lease
219 exists.--
220 (1) When land with an existing agricultural lease is
221 acquired in fee simple pursuant to this chapter or chapter 375,
222 the existing agricultural lease may continue in force for the
223 actual time remaining on the lease agreement. Any entity
224 managing lands acquired under this section must consider
225 existing agricultural leases in the development of a land
226 management plan required under s. 253.034.
227 (2) Where consistent with the purposes for which the
228 property was acquired, the state or acquiring entity shall make
229 reasonable efforts to keep lands in agricultural production
230 which are in agricultural production at the time of acquisition.
231 Section 5. Paragraph (a) of subsection (2) of section
232 373.0361, Florida Statutes, is amended to read:
233 373.0361 Regional water supply planning.--
234 (2) Each regional water supply plan shall be based on at
235 least a 20-year planning period and shall include, but need not
236 be limited to:
237 (a) A water supply development component for each water
238 supply planning region identified by the district which
239 includes:
240 1. A quantification of the water supply needs for all
241 existing and future reasonable-beneficial uses within the
242 planning horizon. The level-of-certainty planning goal
243 associated with identifying the water supply needs of existing
244 and future reasonable-beneficial uses shall be based upon
245 meeting those needs for a 1-in-10-year drought event. Population

246 projections used for determining public water supply needs must
247 be based upon the best available data. In determining the best
248 available data, the district shall consider the University of
249 Florida's Bureau of Economic and Business Research (BEBR) medium
250 population projections and any population projection data and
251 analysis submitted by a local government pursuant to the public
252 workshop described in subsection (1) if the data and analysis
253 support the local government's comprehensive plan. Any
254 adjustment of or deviation from the BEBR projections must be
255 fully described, and the original BEBR data must be presented
256 along with the adjusted data.
257 2. A list of water supply development project options,
258 including traditional and alternative water supply project
259 options, from which local government, government-owned and
260 privately owned utilities, regional water supply authorities,
261 multijurisdictional water supply entities, self-suppliers, and
262 others may choose for water supply development. In addition to
263 projects listed by the district, such users may propose specific
264 projects for inclusion in the list of alternative water supply
265 projects. If such users propose a project to be listed as an
266 alternative water supply project, the district shall determine
267 whether it meets the goals of the plan, and, if so, it shall be
268 included in the list. The total capacity of the projects
269 included in the plan shall exceed the needs identified in
270 subparagraph 1. and shall take into account water conservation
271 and other demand management measures, as well as water resources
272 constraints, including adopted minimum flows and levels and
273 water reservations. Where the district determines it is

274 appropriate, the plan should specifically identify the need for
275 multijurisdictional approaches to project options that, based on
276 planning level analysis, are appropriate to supply the intended
277 uses and that, based on such analysis, appear to be permittable
278 and financially and technically feasible. The list of water
279 supply development options must contain provisions that
280 recognize that alternative water supply options for agricultural
281 self-suppliers are limited.
282 3. For each project option identified in subparagraph 2.,
283 the following shall be provided:
284 a. An estimate of the amount of water to become available
285 through the project.
286 b. The timeframe in which the project option should be
287 implemented and the estimated planning-level costs for capital
288 investment and operating and maintaining the project.
289 c. An analysis of funding needs and sources of possible
290 funding options. For alternative water supply projects the water
291 management districts shall provide funding assistance in
292 accordance with s. 373.1961(3).
293 d. Identification of the entity that should implement each
294 project option and the current status of project implementation.
295 Section 6. Section 373.2234, Florida Statutes, is amended
296 to read:
297 373.2234 Preferred water supply sources.--The governing
298 board of a water management district is authorized to adopt
299 rules that identify preferred water supply sources for
300 consumptive uses for which there is sufficient data to establish
301 that a preferred source will provide a substantial new water

302 supply to meet the existing and projected reasonable-beneficial
303 uses of a water supply planning region identified pursuant to s.
304 373.0361(1), while sustaining existing water resources and
305 natural systems. At a minimum, such rules must contain a
306 description of the preferred water supply source and an
307 assessment of the water the preferred source is projected to
308 produce. If an applicant proposes to use a preferred water
309 supply source, that applicant's proposed water use is subject to
310 s. 373.223(1), except that the proposed use of a preferred water
311 supply source must be considered by a water management district
312 when determining whether a permit applicant's proposed use of
313 water is consistent with the public interest pursuant to s.
314 373.223(1)(c). A consumptive use permit issued for the use of a
315 preferred water supply source must be granted, when requested by
316 the applicant, for at least a 20-year period and may be subject
317 to the compliance reporting provisions of s. 373.236(4) ~~(3)~~.
318 Nothing in this section shall be construed to exempt the use of
319 preferred water supply sources from the provisions of ss.
320 373.016(4) and 373.223(2) and (3), or be construed to provide
321 that permits issued for the use of a nonpreferred water supply
322 source must be issued for a duration of less than 20 years or
323 that the use of a nonpreferred water supply source is not
324 consistent with the public interest. Additionally, nothing in
325 this section shall be interpreted to require the use of a
326 preferred water supply source or to restrict or prohibit the use
327 of a nonpreferred water supply source. Rules adopted by the
328 governing board of a water management district to implement this
329 section shall specify that the use of a preferred water supply

330 source is not required and that the use of a nonpreferred water
331 supply source is not restricted or prohibited.
332 Section 7. Present subsections (2) and (3) of section
333 373.236, Florida Statutes, are renumbered as subsections (3) and
334 (4), respectively, present subsection (4) is renumbered as
335 subsection (5) and amended, and a new subsection (2) is added to
336 that section, to read:
337 373.236 Duration of permits; compliance reports.--
338 (2) The Legislature finds that some agricultural
339 landowners remain unaware of their ability to request a 20-year
340 consumptive use permit under subsection (1) for initial permits
341 or for renewals. Therefore, the water management districts shall
342 inform agricultural applicants of this option in the application
343 form.
344 (5) ~~(4)~~ Permits approved for the development of alternative
345 water supplies shall be granted for a term of at least 20 years.
346 However, if the permittee issues bonds for the construction of
347 the project, upon request of the permittee prior to the
348 expiration of the permit, that permit shall be extended for such
349 additional time as is required for the retirement of bonds, not
350 including any refunding or refinancing of such bonds, provided
351 that the governing board determines that the use will continue
352 to meet the conditions for the issuance of the permit. Such a
353 permit is subject to compliance reports under subsection (4) ~~(3)~~.
354 Section 8. Section 373.407, Florida Statutes, is created
355 to read:
356 373.407 Memorandum of agreement for an agricultural-
357 related exemption.--No later than July 1, 2007, the Department

358 of Agriculture and Consumer Services and each water management
359 district shall enter into a memorandum of agreement under which
360 the Department of Agricultural and Consumer Services shall
361 assist in a determination by a water management district as to
362 whether an existing or proposed activity qualifies for the
363 exemption in s. 373.406(2). The memorandum of agreement shall
364 provide a process by which, upon the request of a water
365 management district, the Department of Agriculture and Consumer
366 Services shall conduct a nonbinding review as to whether an
367 existing or proposed activity qualifies for an agricultural-
368 related exemption in s. 373.406(2). The memorandum of agreement
369 shall provide processes and procedures by which the Department
370 of Agriculture and Consumer Services shall undertake this review
371 effectively and efficiently and issue a recommendation.
372 Section 9. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1015 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 Committee
3 Representative(s) Pickens offered the following:
4
5 **Amendment**
6 Remove line(s) 214-215 and insert:
7
8 has existing or authorized residential development that will
9 result in a density at build out of at least 1,000 residents per
10 square mile, then the area shall be determined to be urban and
11 the parcel may not exceed 5,120 acres.
12

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HB 1155

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of Proposed Changes

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

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

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

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

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

C. SECTION DIRECTORY:

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

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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

Clean-up of a contaminated facility can range from approximately $30,000 to $2 million; the average cost being approximately $475,000. The DEP knows of only one incident whereby an auto accident and the actions of responders exacerbated a spill of perc. The site in question is not currently eligible

for inclusion in the program for clean-up. The DEP has no record of how many other potential sites may be affected by this proposed legislation. According to the DEP, if the program is not reopened as envisioned by the bill and under current funding levels, the clean-up will take approximately 60 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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

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

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

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

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

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

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

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

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

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

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

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

HB 1621

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1621 Coastal Properties Disclosure Statements
SPONSOR(S): Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	5 Y, 0 N	Blalock	Bond
2) Agriculture & Environment Appropriations Committee		Dixon	Dixon
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Environmental Protection has established coastal construction control lines along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida. The purpose of these lines is to define the portions of the beach-dune system that are subject to severe erosion, and to prohibit new construction seaward of this line unless granted a special permit by the Department of Environmental Protection.

This bill requires the seller of property subject to the coastal construction control line to present a prospective purchaser with a specific disclosure statement providing that the property is subject to erosion and to federal, state, or local regulations.

The bill also provides that failure to deliver the disclosure will not effect the enforcement of the sale and purchase contract, create a right of recession, or impair the property's title.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the disclosure requirements that a seller of coastal property must provide to a prospective purchaser.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (department) has established coastal construction control lines, as required by statute, on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida.[1] The purpose of these lines is to define that portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.[2] Upon the recording of the survey showing the location of a beach erosion control line, title to all lands seaward of the erosion control line are deemed to be vested in the state by right of its sovereignty.[3] Property seaward of the coastal construction control line can be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, such rigid coastal protection structures[4], beach nourishment, and protection of marine turtles.

Current law requires that a seller of real property located partially or totally seaward of the coastal construction control line provide to the purchaser an affidavit, or a survey, that discloses to the purchaser the location of the coastal control line on the property being conveyed.[5] This disclosure requirement was established by the legislature to ensure that purchasers in coastal areas were aware that such lands are subject to frequent and severe fluctuations due to erosion.[6] Critical erosion affects the value of property a great deal more than is often acknowledged. The amount of depression of coastal property values due to erosion over the next twenty years for properties along the Atlantic coast of the United States has been estimated at between $1.7 and $2.7 billion.[7]

There also exists in the common law a general duty to disclose when a seller is aware of facts materially affecting value or desirability of property, which are not readily observable and are not known to the buyer.[8] Several provisions in current law require the seller to provide specific disclosure statements prior to the sale of real property. A seller must disclose:

- The amount of ad valorem taxes on real property;[9]
- Whether there are homeowners' association covenants;[10]
- Energy performance level for each new residential building[11]; and

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[1] Section 161.053(1)(a), F.S.
[2] Section 161.053(1)(a), F.S.
[3] Section 161.191(1), F.S.
[4] Rigid coastal protection structures are man-made structures or devices in or near the coastal system for the purpose of preventing erosion of the beach or the upland dune system or to protect upland structures from the effects of coastal wave and current activity.
[5] Section 161.57(2), F.S.
[6] Section 161.57(1), F.S.
[7] *Evaluation of Erosion Hazards Summary* A Collaborative Project of The H. John Heinz III Center for Science, Economics and the Environment, (Prepared for the Federal Emergency Management Agency, Contract EMW-97-CO-0375, April 2000) at: http://www.heinzctr.org/NEW_WEB/PDF/erosnsum.pdf#zoom=100 (last visited March 16, 2006).
[8] *Johnson v. Davis*, 449 So.2d 344 (Fla. 3rd DCA 1984)
[9] Section 689.261, F.S.
[10] Section 720.401, F.S.

- The possibility of increased levels of radon gas.[12]

Contracts for the sale and purchase of a condominium, cooperative, and timeshare interest have several disclosure requirements as well. [13,14,15]

Effect of Bill

The bill amends s. 161.57, F.S., pertaining to the "Coastal Properties Disclosure Statement", to require an additional disclosure of a seller of coastal real property that is seaward of the coastal construction control line as defined s. 161.053, F.S. At or prior to closing the seller is required to disclose that:

> The property being purchased may be subject to coastal erosion and certain federal, state, or local regulations that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The bill also provides that failure to deliver the disclosure, affidavit, or survey required by s. 161.57, F.S., shall not effect the enforcement of sale and purchase contract by either party, create a right of recession by the purchaser, or impair the property's title.

C. SECTION DIRECTORY:

Section 1 amends s. 161.57, F.S., to provide disclosure requirements for property located seaward of the coastal construction control line.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[11] Section 553.9085, F.S.
[12] Section 404.056, F.S.
[13] Section 718.503, F.S.
[14] Section 719.503, F.S.
[15] Section 721.06, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to coastal properties disclosure
3 statements; amending s. 161.57, F.S.; requiring sellers of
4 certain coastal properties to provide a disclosure
5 statement to prospective purchasers; providing language
6 for the disclosure statement; preserving the
7 enforceability of certain contracts and title conveyances;
8 providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 161.57, Florida Statutes, is amended to
13 read:
14 161.57 Coastal properties disclosure statement.--
15 (1) The Legislature finds that it is necessary to ensure
16 that the purchasers of interests in real property located in
17 coastal areas partially or totally seaward of the coastal
18 construction control line as defined in s. 161.053 are fully
19 apprised of the character of the regulation of the real property
20 in such coastal areas and, in particular, that such lands are
21 subject to frequent and severe fluctuations.
22 (2) At or prior to the time a seller and a purchaser both
23 execute a contract for the sale and purchase of any interest in
24 real property located either partially or totally seaward of the
25 coastal construction control line as defined in s. 161.053, the
26 seller shall provide to the prospective purchaser the following
27 disclosure, which may be set forth in the contract or in a
28 separate writing:

29
30 The property being purchased may be subject to coastal
31 erosion and to federal, state, or local regulations that
32 govern coastal property, including the delineation of the
33 coastal construction control line, rigid coastal protection
34 structures, beach nourishment, and protection of marine
35 turtles. Additional information can be obtained from the
36 Florida Department of Environmental Protection, including
37 whether there are significant erosion conditions associated
38 with the shoreline of the property being purchased.
39
40 (3) ~~(2)~~ Unless otherwise waived in writing by the
41 purchaser, at or prior to the closing of any transaction where
42 an interest in real property located either partially or totally
43 seaward of the coastal construction control line as defined in
44 s. 161.053 is being transferred, the seller shall provide to the
45 purchaser an affidavit, or a survey meeting the requirements of
46 chapter 472, delineating the location of the coastal
47 construction control line on the property being transferred.
48 (4) A seller's failure to deliver the disclosure,
49 affidavit, or survey required by this section shall not impair
50 the enforceability of the sale and purchase contract by either
51 party, create any right of rescission by the purchaser, or
52 impair the title to any such real property conveyed by the
53 seller to the purchaser.
54 Section 2. This act shall take effect October 1, 2006.