HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1349 Environmental Protection
SPONSOR(S): General Government Policy Council, Agriculture & Natural Resources Policy Committee, Patronis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2104

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	13 Y, 4 N, As CS	Kaiser	Reese
2)	General Government Policy Council	13 Y, 4 N, As CS	Kaiser	Hamby
3)	Natural Resources Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill addresses several issues related to the powers and duties of the Department of Environmental Protection (DEP). In 2008, the legislature passed SB 542, which reenacted the Florida Forever Program. As with any rewrite of a major program, unintended consequences occurred. CS/HB 1349 corrects inconsistencies discovered in SB 542. The bill delays implementation of land management plan requirements adopted in 2008 to provide more time to accomplish the necessary interagency planning, rulemaking and plan revisions. The bill also clarifies that a majority vote is necessary for the Acquisition and Restoration Council (ARC) to transact business. The bill allows ARC members to serve a total of 8 years. The bill also expands the window for capital expenditures on public access projects.

The bill fixes two "glitches" currently in law. In separate sections of Florida law[1], the deadline is stated as 40 days and 45 days, respectively, for counties to determine intent to purchase surplus lands. The bill amends current law to reflect a "45 day" deadline. Also, two different time frames currently exist for someone to file a petition for an administrative hearing for an environmental resource permit (ERP):

- 14 days to file if the project is linked to activities occurring on sovereignty submerged lands; and
- 21 days to file if the project is not linked to activities occurring on sovereignty submerged lands.

The bill revises the timeframe to 21 days for both linked and unlinked projects.

The bill clarifies that the state maintains legal title to sovereignty lands that were filled by a governmental entity prior to July 1, 1975, if these lands were filled for a public purpose or pursuant to proprietary authorization from the Board of Trustees (BOT) of the Internal Improvement Trust Fund.

The bill provides that if an environmental resource permit is prepared by certain licensed professionals and deemed complete by the DEP, it is presumed to be in compliance with the provisions of the permitting statutes relating to reasonable assurance of compliance with water quality standards and activities in the public interest. If the permit application is challenged by the DEP or a third party, the burden of showing non-compliance by a preponderance of the evidence shall be on the challenging party. The bill also provides the DEP or water management district the authority to forward complaints against a licensed professional to the appropriate professional regulatory agency or the Department of Business and Professional Regulation when the permitting agency finds a review is warranted.

The bill requires the DEP to issue a formal intent to issue or deny a federally delegated air program pre-construction permit within the 90-day requirement period and to act in a timely manner to take final action following the public comment period.

The bill revises and streamlines administrative penalties for violations involving drinking water contamination; wastewater; dredge, fill, or stormwater; mangrove trimming or alterations; solid waste; air emission; and, contaminated site rehabilitation.

The bill creates an exemption to the applicability of the Marketable Record Title Act (MARTA) for any right, title, or interest held by the BOT or by any local government, water management district, or other agency of the state.

The fiscal impact to state and local governments is indeterminate at this time, but appears to be insignificant. The effective date of this legislation is July 1, 2009.

[1] Sections 253.034(6)(f)(1) and 253.111(3), F.S. cite a "45 days after notice" deadline and section 253.111(2), F.S., cites a "40 days after notice" deadline.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sections 1 and 5:
During the 2008 legislative session, the legislature passed SB 542, which reenacted the Florida Forever Program for a period of 10 years and increased the bonding capacity from an aggregate of $3 billion to $5.3 billion while maintaining the $300 million per year cap.

SB 542 made revisions to the content of the land management plan and land management reporting requirements with the intent that management planning and reporting, as well as management itself, be detailed, effective and consistent across agencies. Multiple state agencies, as well as local governments and other entities, are responsible for preparing management plans for the state's 3.5 million acres of conservation lands. Pursuant to Florida law[2], these plans must be updated every ten years. For management units greater than 160 acres in size, the manager is required to form an advisory group composed of multiple entities, as well as hold at least one public hearing. The statutory revisions by SB 542 required that all plans be revised to specifically identify long and short-term goals, quantitative data, and implementation schedules. However, current law is unclear regarding these goals, objectives and measures. State agencies are not in agreement on what standards to apply for these specific requirements, which must be uniform across agencies in order for the information to be compiled for legislative reporting purposes to show overall land management needs and accomplishments. Because no other effective date for implementation of the management plans was provided, the plan requirements took effect on the effective date[3] of SB 542. This has the effect of immediately instituting the new requirements, meaning over 330 management plans need to be amended and at least 268 advisory groups need to be formed to hold public hearings.

The bill delays the implementation of the changes to land management plans by changing the effective date to July 1, 2009, for newly developed or updated plans and by adding a July 1, 2010, beginning date for agencies to submit operational reports. The operational reports are due every 5 years rather than every 2 years. These changes provide more time to accomplish the necessary interagency planning, rulemaking and plan revisions.

[2] Sections 253.034(5) and 259.032(10), F.S.
[3] July 1, 2008

Section 2:
Currently, in separate sections of Florida law[4], the deadline is stated as 40 days and 45 days, respectively, for counties to determine intent to purchase surplus lands from the Board of Trustees of the Internal Improvement Trust Fund (BOT). The bill amends current law to reflect a "45 day" deadline.

Section 3:
The Acquisition and Restoration Council (ARC) is responsible for evaluating, selecting and ranking state land acquisition projects for submission to the board of trustees for approval. During the overhaul of the Florida Forever Act in 2008, several changes were made to the membership of the ARC, which resulted in conflicting language in the statutes. SB 542 increased the membership of the ARC from 9 voting members to 11 voting members but failed to change the number of votes needed for a majority ruling. Also, current statute allows an ARC member to serve two 4-year terms; however, elsewhere in statute, ARC members are limited to 6 years of service. The bill states that a majority vote is needed to transact business. The bill also allows ARC members to serve a total of 8 years.

Section 5:
When the Florida Forever Act was amended in 2008, revisions were made to allow for a minimum percentage of agency allocations to be spent on capital expenditures for public-access related items. The intent of this language was to get the public onto the conservation lands as soon as possible after purchase. As written, the statute limits the agencies' expenditures to the "time of acquisition" only. This provides a limited window of opportunity for planning and implementing public access in the early stages of acquisition.

The bill expands the window for capital expenditures on public access projects that have been identified in the management prospectus, during the development of the initial management plan or update of the plan. The expansion applies to the DEP for acquisition of lands and the purchase of inholdings and additions; the DACS' Division of Forestry for the purchase of state forest inholdings and additions; the FWCC for the purchase of inholdings and additions; and, the DEPs' Florida Greenways and Trails Program to purchase greenways and trails.

The bill also directs the Florida Communities Trust to amend the rule criteria increasing the available point total for public vessel access projects.

Section 6:
Current law[5] provides that all of the state's right, title, and interest to all tidally influenced land or tidally influenced islands bordering or being on sovereignty land, which have been permanently extended, filled, added to existing lands, or created before July 1, 1975, by fill, and might be owned by the state, is hereby granted to the landowner having record or other title to all or a portion thereof or to the lands immediately upland thereof and its successors in interest. The law provides that this provision does not grant or vest title to any filled, formerly submerged state-owned lands in any person who, as of January 1, 1993, is the record titleholder of the filled or adjacent upland property and who filled or caused to be filled the state-owned lands. Nor does the provision operate to affect the title to lands which have been judicially adjudicated or which were the subject of litigation pending on January 1, 1993, involving title to such lands. Further, the provision does not apply to spoil islands nor to any which are included on an official acquisition list, on July 1, 1993, of a state agency or water management district for conservation, preservation, or recreation, nor to lands maintained as state or local recreation areas or shore protection structures. The bill clarifies that the state maintains legal title to sovereignty lands that were filled by a governmental entity prior to July 1, 1975, for a public purpose or pursuant to proprietary authorization from the BOT.

Section 7:
Section 373.196, F.S., provides legislative findings regarding Florida alternative water supply policy.

[4] Sections 253.034(6)(f)(1) and 253.111(3), F.S. cite a "45 days after notice" deadline and section 253.111(2), F.S., cites a "40 days after notice" deadline.
[5] Section 253.12(9), F.S.

The current law provides directives relating to alternative water supply development. It also provides a finding that funding for water supply development, including alternative supplies, will be a shared responsibility of the state, water management districts, and local entities.

The current law defines the roles of the water management districts, local governments and other entities regarding alternative water supply development. The roles of the water management districts are:

- formulation and implementation of strategies and programs;
- collection and evaluation of data;
- construction, operation and maintenance of facilities for flood control, storage, and recharge;
- planning for development in conjunction with local governments and others; and,
- providing technical and financial assistance.

The roles of local governments, regional water supply authorities, special districts, and water utilities are:

- planning, design, construction, operation, and maintenance of alternative water supply development projects;
- formulation and development of alternative water supply development strategies and programs;
- planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water; and,
- coordination of activities with appropriate water management districts.

Current law also provides language to ensure that nothing in this act interferes with the existing rights of entities to continue operating existing water production and transmission facilities or to enter into contracts to meet their respective future needs. Current law requires the water management districts to include, when their annual budget is submitted, specific funding allocations that provide, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. The Suwannee River and the Northwest Florida Water Management Districts are not required to meet this requirement but are encouraged to try to the greatest extent practicable. State funds from the Water Protection and Sustainability Program are available for project construction costs for alternative water supply development projects selected by a water management district for inclusion in the program.

The bill adds a new subsection (6) to s. 373.236, F.S., to provide a mechanism for a private landowner who has modest water needs presently, to dedicate large tracts of land or to fund construction for alternative water supply projects and have some assurance that as his/her water needs increase in the future, the landowner will have access to that water. A landowner that makes extraordinary contributions to an alternative water supply development project may enter into an agreement with a local government, regional water supply authority, or water utility to provide for future water needs. At that time, the governmental entity may apply for a consumptive use permit for a duration of up to 50 years.

The consumptive use permit is subject to all of the regulatory safeguards and water management district scrutiny imposed on all consumptive use permits. For instance, the agreement between the landowner and the public utility will be included in the assessment of information by the water management district in its consideration regarding the duration of the permit. A private landowner may not hold the permit, either directly or indirectly.

Section 8:

The bill provides that if an environmental resource permit is prepared by a licensed, professional engineer, surveyor and mapper, landscape architect, or geologist, and deemed complete by the DEP, it is presumed to be in compliance with the provisions of statutes relating to reasonable assurance of compliance with water quality standards and activities in the public interest. If the permit application is challenged by the DEP or a third party, the burden of showing non-compliance by a preponderance of the evidence shall be on the challenging party.

The bill also provides the DEP or water management district the authority to forward complaints against a licensed professional to the appropriate professional regulatory agency or the Department of Business and Professional Regulation (DBPR) when the permitting agency finds a review is warranted. If the regulatory board sanctions the professional resulting from a complaint submitted by the permitting agency, the professional may not certify under s. 373.414, F.S., during the period of sanction. If a professional is sanctioned three times by his/her respective board resulting from a complaint submitted by the permitting agency, the professional is permanently prohibited from certifying under s. 373.414, F.S.

Section 9:
Currently, two different time frames exist for someone to file a petition for an administrative hearing for an environmental resource permit (ERP):

- 14 days to file if the project is linked to activities occurring on sovereignty submerged lands; and
- 21 days to file if the project is not linked to activities occurring on sovereignty submerged lands.

This difference in timeframes is confusing for both the general public and the agencies. The bill revises the timeframe to 21 days for both linked and unlinked projects.

Section 10:
Title V major source air operation permits issued by the DEP under federally delegated or approved programs are exempted from the 90-day default provision of Florida law[6]. This exemption does not apply to federally delegated air program pre-construction permitting.

Federal programs require a 30-day public comment period, as well as a public meeting, if requested. These procedural requirements may cause permit processing to exceed the existing 90-day requirement, resulting in a default permit. Were a default permit to result, federal program approval may be lost, requiring applicants to obtain separate state and federal permits.

The bill requires the DEP to issue a formal intent to issue or deny the permit within the 90-day requirement period and to act in a timely manner to take final action following the public comment period, but prevents the possibility of default resulting solely from compliance with the federally acquired public participation requirement.

Section 11:
Current Florida law[7] allows the DEP and parties alleged to be in violation of Florida's environmental laws to resolve less significant environmental violations in an administrative proceeding instead of in state court. Except for violations involving hazardous wastes, asbestos, or underground injection, the DEP must proceed administratively in all cases in which it seeks penalties that do not exceed $10,000 per assessment, as calculated in accordance with Florida law[8].

Through the administrative enforcement process, an Administrative Law Judge (ALJ) may impose up to $10,000 in administrative penalties in addition to requiring actions to correct the violation and bring the regulated entity back into compliance. Section 403.121, F.S., establishes a specific penalty schedule for violations that may be pursued administratively and allows alleged violators to obtain a hearing before the ALJ to dispute the DEP's allegations, to mediate the dispute or to opt out of the administrative process entirely. If an alleged violator opts out, the DEP must file in state court to pursue enforcement. The DEP bears the burden of proving, by a preponderance of the evidence, that the alleged violator caused the violation. In any administrative proceeding brought by the DEP, the prevailing party recovers all costs. In cases that ultimately require a Division of Administrative Hearings hearing, the ALJ has final order authority. The alleged violator is entitled to an award of attorney's fees (up to $15,000) if the ALJ determines that the DEP's initiation of the enforcement action was not substantially justified.

The bill prohibits the DEP from seeking administrative remedies for violations involving major sources of air pollution. It also clarifies that the alleged violator is the prevailing party when the ALJ enters a final order that does not require any corrective action or award damages or penalties to the DEP.

[6] Section 403.1876, F.S.
[7] Section 403.121, F.S.
[8] Section 403.121 (3), (4), (5), (6), (7), and (8), F.S.

Rather than changing the administrative process currently in law, the bill modifies the penalty schedule to clarify existing violations already operating with the Environmental Litigation Reform Act (ELRA) and expand the list to include new program areas that have not used ELRA before to resolve violations. The changes ensure that a more complete range of less significant environmental violations will be resolved administratively without the need for costly and time-consuming state court litigation.

For drinking water facilities, the bill provides for the following new penalty schedule:

- $1,500 for failure to obtain a clearance letter from the DEP before putting a drinking water system into operation;
- $2,000 for failure to complete required public notification of violations, exceedances, or failures to complete required public notification relating to maximum contaminant violations;
- $1,000 for failure to submit a consumer confidence report to the department; and
- $1,000 for failure to meet licensed operator and staffing requirements at a drinking water facility.

For wastewater facilities, the bill provides for the following new penalty schedule:

- $5,000 for failure to obtain a required wastewater permit before construction or modification, other than a permit required for surface water discharge;
- $4,000 for failure to obtain a permit to construct a domestic wastewater collection and transmission system;
- $1,000 for failure to renew a required wastewater permit, other than a permit required for surface water discharge;
- $2,000 for failure to properly notify the department of an unauthorized spill, discharge, or abnormal event that may impact public health or the environment; and
- $2,000 for failure to provide or meet requirements for licensed operators or staffing at a wastewater facility.

For dredging or filling violations, the bill provides for the following new penalty schedule:

- $3,000 for dredging or filling if the violator previously applied for or obtained authorization from the DEP to dredge or fill within wetlands or surface waters; and
- $10,000 for dredge, fill or stormwater management system violations occurring in a conservation easement.

For mangrove trimming and alteration violations, the bill provides for the following new penalty schedule:

- $5,000 against any person who violates ss. 403.9321-403.9333, F.S. Violations can now be assessed against anyone, not just the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration;
- An additional $100 penalty against any person for each mangrove illegally trimmed and $250 penalty against any person for each mangrove illegally altered or removed for a second or subsequent violation, not to exceed $10,000; and
- An additional $250 penalty for each mangrove illegally trimmed or altered for a second or subsequent violation when the violator is a professional mangrove trimmer, not to exceed $10,000.

For solid waste violations, the bill provides for the following new penalty schedule:

- An additional $1,000 for unpermitted or unauthorized solid waste if the waste is Class I or Class III, which now includes yard waste;
- $5,000 for failure to timely implement evaluation monitoring or corrective actions in response to adverse impacts to water quality at permitted facilities;
- $3,000 for failure to have a trained spotter or trained operator on duty; failure to apply cover, failure to control or correct erosion resulting in exposed water; failure to implement a gas management system; or processing or disposing of unauthorized waste;
- $2,000 for failure to compact and slope waste, or failures to maintain a working face; and
- $1,000 for failure to timely submit annual updates required for financial assurance.

For storage tank system and petroleum contamination violations, the bill provides for the following new penalty schedule:

- $5,000 for failure to submit site assessment reports;
- $3,000 for failure to timely assess or remediate petroleum contamination; and
- $1,000 for failure to repair a storage tank system.

For contaminated site rehabilitation violations, the bill provides the following new penalty schedule:

- $5,000 for failure to submit a complete site assessment report; failure to provide notice of contamination beyond property boundaries, or complete a well survey as required by department rule; for the use or injection of substances or materials to surface water or groundwater for remediation purposes without prior department approval; or for the operation of a remedial treatment system without prior approval by the department; and.
- $3,000 for failure to timely assess or remediate contamination as required by department rule.

For air emission violations, the bill removes the additional $1,000 administrative penalty for an air emission if the emission results in an air quality violation.

The bill clarifies that the administrative penalties listed in s. 403.121(4), F.S., are in addition to the program specific penalties assessed according s. 403.121(3), F.S., and that these penalties may be assessed in cases involving violations that are not specified in s. 403.121(3), F.S.

The bill also clarifies the meaning of "pollution control system or device" by elaborating that penalties will be assessed for failure to properly install, operate, maintain or use a required "pollution control, collection, treatment, or disposal system or device" and failure to use appropriate best management practices or erosion and sediment controls. These violations are subject to a $4,000 administrative penalty.

For violations involving failure to obtain a permit, the bill provides a penalty of $3,000 in cases where an alleged violator failed to obtain a permit but is complying with applicable requirements and a penalty of $5,000 in cases where an applicant failed to obtain a permit and is not in compliance with applicable requirements.

The bill increases the penalty from $500 to $1,000 for failure to prepare, submit, maintain, or use required reports or other required documentation.

The bill increases the penalty from $500 to $1,000 for failure to comply with any other regulatory statute or rule requirement not otherwise identified in s. 403.121, F.S.

The bill clarifies that the DEP may seek more than $5,000 against any one violator if the violator received any economic benefit from the violation.

Sections 12-13:

The Marketable Record Title Act (MARTA) provides that, after a period of 30 years, if a restriction is not mentioned specifically in subsequent transfers of deeds and property, the restriction will no longer exist. For instance, if someone files a "wild deed" on a piece of government-owned property and the governmental entity does not file a notice to protect the government's interest in the property, the entity filing the "wild deed" may take ownership of the property.

For state agencies and water management districts with vast land holdings, the resources used to monitor and defend interest in land holdings, if challenged based on MARTA, can be significant.

The bill creates an exemption to the applicability to MARTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund or by any local government, water management district, or other agency of the state. The bill also resolves confusion regarding whether conservation easements and land protection agreements were "easement in use" and prevents rights and interests acquired with public funds for the public benefit from being extinguished.

Section 14-16:
These sections match up cross-references in the statutes.

B. SECTION DIRECTORY:

Section 1: Amends s. 253.034, F.S.; delays the date certain for management plans to provide certain information and comply with the requirements established in 2008.

Section 2: Amends s. 253.111, F.S.; removes a timeframe by which county commissioners must decide whether to acquire land from the Board of Trustees.

Section 3: Amends s. 259.035, F.S.; increases the number of terms a member of the Acquisition and Restoration Council may serve; clarifies the filling of vacancies on the Council; and, provides for a majority vote.

Section 4: Amends s. 259.037, F.S.; provides a date certain for management plans to provide certain information.

Section 5: Amends s. 259.105, F.S.; removes timeframe for certain proceeds from Florida Forever Trust Fund to be spent on capital improvement projects; amends criteria for awarding grants for certain projects; and, provides for a majority vote.

Section 6: Amends s. 253.12, F.S.; provides that certain lands are excluded from automatically becoming private property.

Section 7: Amends s. 373.236, F.S.; authorizes the issuance of 50-year permits by the Department of Environmental Protection and the water management districts to certain entities for specific water supply development projects; and, provides for compliance reporting and review, modification and revocation regarding such permits.

Section 8: Amends s. 373.414, F.S.; revising permitting criteria for surface waters and wetlands; providing a presumption of compliance for certain permit applications; and, requiring the Department of Environmental Protection and third parties to prove noncompliance by a preponderance of the evidence in challenges of such permit applications.

Section 9: Amends s. 373.427, F.S.; revises timeframe for filing a petition for an administrative hearing on an application to use board of trustees-owned submerged lands.

Section 10: Amends s. 403.0876, F.S.; clarifies that the Department of Environmental Protection's failure to approve or deny certain air construction permits within 90 days does not automatically result in approval or denial.

Section 11: Amends s. 403.121, F.S.; excludes certain air pollution violations from departmental actions; clarifies when the respondent in an administrative action is the prevailing party; revises the penalties that may be assessed for violations involving drinking water contamination, wastewater, dredge, fill, or stormwater, mangrove trimming or alterations, solid waste, air emission, and waste cleanup; increases fines related to public water system requirements; and, revises provisions relating to a limit on the amount of a fine for a particular violation by certain violators.

Sections 12-13: Amends ss.712.03-712.04, F.S.; provides an exemption from an entitlement to marketable record title to interests held by governmental entities.

Sections 14-16: Matches up cross references in ss. 373.036, 373.4135, and 373.4136, F.S.

Section 17: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments" below.

2. Expenditures:

   See "Fiscal Comments" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments" below.

2. Expenditures:

   See "Fiscal Comments" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact to the private sector is indeterminate. There may be some additional costs from exercising a landowner's riparian rights given the exemption of sovereignty lands that were filled for a public purpose or proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund, but those costs, if any, are indeterminate.

There may be a slight cost savings to the private sector from synchronizing the linked and unlinked clocks to 21 days because of clarity and ease of filing a petition for an administrative hearing for an environmental resource permit for activities occurring on sovereignty submerged lands; however, the cost savings is indeterminate.

The bill increases fines assessed against persons for some existing minor environmental violations subject to the DEP administrative penalties. It is unknown how the streamlining of the additional administrative penalties provided for in Section 9 of the bill will affect the private sector in both time and litigation expenses. The potential for savings is significant as the Environmental Litigation Reform Act (ELRA) process takes an average of four months, while processing through the state courts averages two years. Also, violators do not need to hire an attorney to process alleged violations through the ELRA process, and, if unsatisfied with the administrative process, the right to go to court is automatically preserved. Additionally, if the alleged violator prevails in the ELRA hearing before an administrative law judge, he or she may be entitled to costs and up to $15,000 in attorney's fees.

D. FISCAL COMMENTS:

There may be cost savings from the clarification and synchronization of the time clocks, reporting deadlines and other technical changes, but any savings are indeterminate at this time. State agencies, municipalities, water management districts and other governmental entities may see reduced litigation costs from the clarification to title to tidal lands vested in the state, exemptions to sovereignty lands and the exemption of their lands from the Marketable Record Title Act (MARTA); however, these litigation savings, if any, are indeterminate. Finally, it is unknown whether the DEP will see reduced litigation expenses from expanding the administrative penalties associated with the ELRA process for minor environmental violations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On **March 19, 2009**, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment and (2) amendments to the strike-all amendment to HB 1349.

Amendment 1 to the strike-all amendment provides that if an application for an environmental resource permit or license for activities in surface waters and/or wetlands has been prepared by a licensed or certified professional and is determined to be complete by the Department of Environmental Protection (DEP), it is presumed to comply with the provisions of the permitting statute. If the DEP denies the permit application or the application is challenged by a third party, the burden of showing non-compliance by a preponderance of the evidence shall be on the DEP or the third party.

Amendment 2 to the strike-all amendment directs the Florida Communities Trust to amend its rule criteria to make the available point total for public boating access projects equal to the points available for projects located in low-income or otherwise disadvantaged communities.

The **differences between the strike-all amendment and HB 1349** are, the strike-all amendment:

- Allows newly developed or updated management plans to include outcomes, goals and elements not previously considered as part of the plans;
- Requires a vote of 6 of the 11 members of the Acquisition and Restoration Council to conduct business;
- Requires operations reports of the Land Management Uniform Accounting Council to be submitted every 5 years rather than every 2 years;
- Expands the timeframe for capital expenditures on public access projects to more than one year after acquisition;
- Clarifies that a professional engineer, who is licensed under chapter 471, F.S., is not in violation of mangrove trimming or removal by virtue of preparing or signing a permit application;
- Removes a particular drinking water violation from the penalty schedule; and,
- Corrects various technical inconsistencies, such as verb tenses, typos, etc.

On March 31, 2009, the General Government Policy Council adopted (7) amendments to CS/HB 1349.

- **Amendment 1** directs the Florida Communities Trust to amend its rule criteria to increase the available point total for grants for public vessel access projects.
- **Amendment 2** authorizes water management districts to issue long term (50 year) consumptive use permits for public/private partnerships when the private landowner contributes land or money to implement the project.
- **Amendment 3** provides that if an application for an environmental resource permit or license for activities in surface waters and/or wetlands has been prepared by certain licensed professionals and is determined to be complete by the Department of Environmental Protection (DEP), it is presumed to comply with the provisions of the permitting statute. If the DEP denies the permit application or the application is challenged by a third party, the burden of showing non-compliance

by a preponderance of the evidence shall be on the DEP or the third party. The amendment also provides for sanctions against the license professional by the appropriate professional regulatory board or the Department of Business and Professional Regulation when the permitting agency finds a review warranted.

- **Amendment 4** provides that a community water system failing to notify customers of a violation or failing to meet operator and staffing requirements are penalized the same as non-community water systems.
- **Amendment 5** clarifies what constitutes "timely" as it relates to petroleum storage tank penalties by referencing department rules, where specific timelines are spelled out.
- **Amendment 1 to Amendment 5** limits the DEP to issuing a notice of violation (NOV) only for a failure to submit any site assessment report at all, and clarifies that as long as a responsible party submits a site assessment report (SAR), the DEP will implement the SAR review process (outlined in DEP rules) to resolve any SAR deficiencies prior to issuing an NOV.
- **Amendment 6** technical amendment to update terminology from "waste cleanup" to "contaminated site rehabilitation."