CS/SB 1684 by **EP, Altman**; (Compare to H 0199) Environmental Regulation

CS/SB 1588 by **CM, Evers**; (Similar to CS/H 0485) Used Tires

230732	A	S	AG, Garcia	Delete L.13:	04/04 11:46 AM
313226	A	S	AG, Garcia	Delete L.37 - 38:	04/04 11:47 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

AGRICULTURE
Senator Montford, Chair
Senator Bullard, Vice Chair

MEETING DATE: Monday, April 8, 2013
TIME: 1:00 —3:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Montford, Chair; Senator Bullard, Vice Chair; Senators Brandes, Galvano, Garcia, Grimsley, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1684** Environmental Preservation and Conservation / Altman (Compare H 199, CS/H 999, CS/H 1063, H 7127, S 588, CS/S 948, S 1470)	Environmental Regulation; Authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program, etc. EP 04/02/2013 Fav/CS AG 04/08/2013 AGG AP	
2	**CS/SB 1588** Commerce and Tourism / Evers (Similar CS/H 485)	Used Tires; Prohibiting the sale of unsafe used tires by used tire retailers; providing what constitutes an unsafe used tire; providing that a person who sells or offers for sale an unsafe used tire commits an unfair and deceptive trade practice, etc. CM 04/01/2013 Fav/CS AG 04/08/2013 AP	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL:	CS/SB 1684
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Weidenbenner	Halley	AG	**Pre-meeting**
3.			AGG	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1684 makes changes to statutes related to environmental regulation and permitting. The CS:

- Provides that the Department of Environmental Protection (DEP) may adopt rules for the electronic submission of forms, documents, fees or reports;
- Provides that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. It also provides that prior to the third request, the permittee should be offered a meeting to resolve outstanding issues. Lastly, it allows the permittee to request the application be finalized if he or she believes the request for additional information is not supported by any legal authority;
- Provides for an expansion of the definition of "phosphate-related expenses";
- Provides that the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is authorized to issue leases or consents of use to special event promoters and boat show owners to allow for the installation of temporary structures. The lease or consent of use must include appropriate lease fees and must be for a period not to exceed 45 days and for a duration not to exceed 10 consecutive years;
- Authorizes the DEP to establish general permits for special events relating to boat shows;

- Defines "first-come, first-served basis" as it relates to marinas; provides requirements for the calculation of lease fees for certain marinas; and provides conditions for the discount and waiver of lease fees for certain marinas, boatyards and marine retailers;
- Provides for the waiver of lease fees for private residential docks and piers over sovereignty submerged lands;
- Provides general permits for local governments to construct certain mooring fields and places a limit on the size of mooring fields;
- Provides that when there are competing consumptive use permit (CUP) applications, a water management district (WMD) or the DEP must have also issued an affirmative proposed agency action for each application before the DEP or WMD has the right to approve or modify the application that best serves the public interest;
- Provides that permitted water allocations may not be changed under certain circumstances with respect to seawater desalination plants and other drought resistant water sources;
- Provides that the issuance of well permits is the sole responsibility of the WMDs and prohibits government entities from imposing requirements and fees associated with the installation and abandonment of a groundwater well;
- Provides that licensure of water well contractors by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision;
- Exempts certain ponds, ditches and wetlands from regulatory requirements;
- Provides a statement of policy for working on water supply issues cooperatively;
- Provides that "self-suppliers" are to be included in the planning process to meet future water supply needs and defining "self-suppliers";
- Requires the WMDs to coordinate and cooperate with the Department of Agriculture and Consumer Services (DACS) in its regional water supply planning process;
- Provides that a person can bring a cause of action for damages resulting from a discharge of certain types of pollution if not regulated or authorized pursuant to ch. 403, F.S.;
- Defines "beneficiary" as it relates to the entities a local government may collect stormwater fees from;
- Extends the payment deadline of permit fees for major sources of air pollution and directs that fees must be based on actual emissions and not permitted emissions;
- Provides that local governments may not compete with recovered materials dealers while an application for engaging in business is pending with the locality and provides a time limit of 90 days for processing the application;
- Provides for expedited permitting of interstate natural gas pipelines; and
- Provides that a permit is not required for the restoration of seawalls at their previous locations or upland of their previous locations, or within 18 inches, instead of 12 inches, waterward of their previous locations.

This CS substantially amends the following sections of the Florida Statutes: 20.255, 125.022, 166.033, 211.3103, 253.0345, 253.0347, 373.118, 373.233, 373.236, 373.308, 373.323, 373.406, 373.701, 373.703, 373.709, 376.313, 403.031, 403.061, 403.0872, 403.7046, 403.813, 403.973, 570.076, and 570.085. The CS creates sections 253.0346 and 403.8141 of the Florida Statutes.

II. Present Situation:

The statutes affected by this CS are diverse. The present situation of each area affected by the CS will be addressed in Section III – Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 19 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the EP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for the organizational structure of the DEP. Section 403.061, F.S., authorizes the DEP to have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

The DEP currently accepts certain types of permit applications on-line. In addition, Florida's five WMDs have developed a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's website for obtaining information regarding the WMD's permitting programs, applying for permits and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permitting), the construction of wells (well construction permitting), and how new development affects water resources (environmental resource permitting).

Effect of Proposed Changes

The CS amends ss. 20.255 and 403.061, F.S., authorizing the DEP to adopt rules requiring or incentivizing electronic submission of any form, document or fee required for an application for a permit under ch. 161, F.S., (relating to beach and shore preservation), ch. 253, F.S., (relating to state lands), ch. 373, F.S., (relating to water resources), ch. 376, F.S., (relating to pollutant discharge prevention and removal), or ch. 403, F.S., (relating to environmental control).

Sections 2 and 3 amend ss. 125.022 and 163.033, F.S., respectively, relating to development permits.

Present Situation

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance or any other official action of local government having the effect of permitting the development of land.[1] Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a

[1] Section 163.3164(16), F.S.

development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development. This does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The CS amends ss. 125.022 and 163.033, F.S., providing that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county (CS section 2) or the municipality (CS section 3) is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

Present Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate is $1.61 per ton severed, except for the time period from January 1, 2015 until December 21, 2022, where it is set at $1.80 per ton severed.

The proceeds of all taxes, interest and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund: 25.5 percent.
- To the credit of the General Revenue Fund of the state: 35.7 percent.
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 12.8 percent.
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 10 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The CS amends s. 211.3103, F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands which were formerly phosphate lands, and community infrastructure on county owned environmental lands that were formerly phosphate lands.

Sections 5 and 23 amend s. 253.0345, F.S., and create s. 403.8141, F.S., respectively, relating to special events on sovereignty submerged lands.

Present Situation

The Board of Trustees may authorize the use of sovereignty submerged lands for special events. The Board of Trustees is authorized to issue "consents of use" or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings and access walkways on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the Board of Trustees. The Board of Trustees must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.[2]

The Board of Trustees' rules contain three classifications for special events:

- Class II Special Events are events of 30 days or less involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline along the affected sovereignty submerged land. These activities require a letter of consent from the DEP but no lease.[3]
- Class III Special Events are single events involving the construction of 50 or fewer new slips or a preempted area of 50,000 square feet or less. A lease is required and the term of the lease is limited to 30 days or less.[4]
- Class IV Special Events are events that do not qualify as Class III events or are events authorized to be conducted more than once during the lease term. A lease is required and the term of the lease may be up to five years.[5]

[2] *See* s. 253.0345, F.S. *See also* Rule 18-21.0082, F.A.C., for information required on applications for leases or consents of use and for provisions concerning limitations on consents of use and leases, depending on the type of event.
[3] Rule 18-21.005(1)(c)17., F.A.C.
[4] Rule 18-21.005(1)(d)10., F.A.C.

Any special event must be for 30 days or less. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should both the promoter or riparian owner fail to do so within the time specified in the agreement.[6]

Effect of Proposed Changes

Section 5 of the CS amends s. 253.0345, F.S., to provide that the Board of Trustees is authorized to issue leases or consents of use to special event promoters and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings and access walkways, on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or consent of use for a special event under this section must include an exemption from lease fees and must be for a period of 45 days or less and for a duration of 10 consecutive years or less.

Section 23 of the CS creates s. 403.8141, F.S., directing the DEP to issue permits for special events as defined in s. 253.0345, F.S. The permits must be for a period that runs concurrently with the letter of consent or lease issued and must allow for the movement of temporary structures within the footprint of the lease area.

Sections 6 and 7 creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amend s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

Present Situation

The Board of Trustees is responsible for the administration and disposition of the state's sovereignty submerged lands. [7] It has the authority to adopt rules and regulations pertaining to anchoring, mooring or otherwise attaching to the bottom. Waterfront landowners must receive the Board of Trustees' authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the Board of Trustees' behalf.

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing and others as defined by law.[8] Riparian landowners must obtain the Board of Trustees' authorization for installation and maintenance of docks, piers and boat ramps on sovereignty submerged land.[9] Under the Board of Trustees' rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10]

---

[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.
[7] Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.
[8] *See* s. 253.141(1), F.S.
[9] Rule 18-21.005(1)(d), F.A.C.
[10] *See* Rules 18-20.003(2) and (19), F.A.C.

Authorization may be by rule, letter of consent or lease.[11] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[12]

The Board of Trustees has promulgated detailed rules regulating the design of docks and related structures, including determining whether a lease is required and setting the amount of lease fees.[13] The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve;
- Area of sovereignty submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue; and
- Whether the dock is for "private residential" or other uses.

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on annual income, square footage or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated like standard lease fees but with a multiplier for the term in years. Site inspections are conducted at least once every five years by the DEP or a WMD to determine compliance with lease conditions.[14]

When determining whether to approve or deny uses for sovereignty submerged land leases, the Board of Trustees must consider whether such uses pass a public interest test. "Public interest" is defined as:

> [T]he demonstrable environmental, social and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, or severance of materials from sovereignty lands, the Board of Trustees must consider the ultimate project and purpose to be served by said use, sale, lease or transfer of lands or materials.[15]

There are currently three categories of leases identified in Rule 18-21.008, F.A.C.:

[11] Rule 18-21.005(1), F.A.C.
[12] Rule 18-21.008(1)(b)(2), F.A.C.
[13] *See* Rules 18-20 and 18-21, F.A.C.
[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), F.A.C.

- Standard leases are for terms of five years with the exception of leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for ten years.
- Extended Term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
  - Facilities or activities that provide public access;
  - Facilities constructed, operated or maintained by government or funded by government secured bonds; and
  - Facilities that have other unique operational characteristics as determined by the Board of Trustees.

Florida Clean Marina Program

The Florida Clean Marina Program is a voluntary designation program. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention and emergency preparedness.[16]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Measures include using dustless sanders, recycling oil and solvents, and re-circulating pressure wash systems to recycle wastewater.[17]

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer also employs environmental best management practices in its boat and engine service operations and facilities.[18]

As of June 21, 2012, there were 263 designated Clean Marinas, 38 Clean Boatyards and 17 Clean Marine Retailers in Florida.[19]

Effect of Proposed Changes

Section 6 of the CS creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers. The CS defines "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is no club membership, stock ownership, equity interest or other qualifying requirement; and

[16] DEP, *About Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/about.htm (last visited Mar. 29, 2013).
[17] *Id.*
[18] *Id.*
[19] DEP, *Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/ (last visited Mar. 29, 2013).

- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open to the public, a 30 percent discount on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state the slips are open to the public on a first-come, first-served basis.

For a facility designated by the DEP as a Clean Marina, Clean Boatyard or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A 10 percent discount on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease; and
  - Does not change use during the term of the lease.
- Extended term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease;
  - Does not change use during the term of the lease; and
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with this section, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

This section only applies to new leases or amendments to leases effective after July 1, 2013.

Section 7 of the CS provides that lease fees are not required for:

- Private residential single-family docks designed to moor up to four boats so long as the preempted area is equal to or less than 10 times the distance along the riparian shoreline or the square footage allowed for private residential single-family docks under rules adopted by the Board of Trustees, whichever is greater.
- Private residential multi-family docks designed to moor boats up to the number of units within the development that are equal to or less than 10 times the riparian shoreline along the sovereignty submerged land on the affected waterbody multiplied by the number of units with docks in the development.

Section 8 amends s. 373.118, F.S., relating to general permits for marine facilities built by local governments.

Present Situation

Section 373.118(4), F.S., directs the DEP to adopt one or more general permits for local governments to construct, operate and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks and parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of

regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to ch. 379, F.S., must obtain Clean Marina Program Status prior to opening for operation, and must maintain that status for the life of the facility. Marinas and mooring fields authorized under a general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The CS amends s. 373.118(4), F.S., removing a provision directing the DEP to adopt rules for one or more general permits for local governments to construct, operate and maintain public marina facilities. The CS removes a provision that local government facilities permitted under s. 373.118(4), F.S., must obtain Clean Marina Program status before opening for operation and must maintain that designation for the life of the facility. The CS also removes a provision limiting such facilities to 50,000 square feet over wetlands and other surface waters.

The CS adds a provision limiting mooring fields permitted under s. 373.118(4), F.S., to 100 vessels and it adds a provision authorizing the Board of Trustees to delegate to the DEP the ability to issue leases for mooring fields that meet the requirements of the general permit per s. 373.118(4), F.S.

Section 9 amends s. 373.233, F.S., relating to consumptive use permitting.

Present Situation

A CUP establishes the duration and type of water an entity may use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as the "three-prong test." Specifically, the proposed water use:

- Must be a "reasonable-beneficial use," as defined in s. 373.019, F.S.;
- Must not interfere with any presently existing legal use of water; and
- Must be consistent with the public interest.[20]

Section 373.233, F.S., provides that if two or more complete applications that otherwise comply with the provisions of Part II of ch. 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that are in conflict for any other reason, the governing board of the DEP or the WMD has the right to approve or modify the application which best serves the public interest.

The Three Prong Test

"Reasonable-beneficial use," the first prong of the test, is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner

[20] Section 373.223(1)(a-c), F.S.

which is both reasonable and consistent with the public interest."[21] The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and water management needs.[22] These criteria include consideration of the quantity of water requested; the need, purpose and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[23]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[24] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[25]

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[26] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the particular WMD or the DEP gives preference to renewal applications.[27]

Effect of Proposed Changes

The CS amends s. 373.233, F.S., to provide that where there are competing CUP applications and the governing board of a WMD or the DEP has deemed the applications complete, the governing board of a WMD or the DEP has the right to approve or modify the application which best serves the public interest.

---

[21] Section 373.019(16), F.S. *See also* Rule 62-410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[22] *See* Rule 62-40, F.A.C.
[23] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[24] Section 373.223(1)(b), F.S.
[25] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).
[26] *Supra* note 23.
[27] *See* s. 373.233, F.S.

Section 10 amends s. 373.236, F.S., relating to the duration of CUPs.

Present Situation

Section 373.236(1), F.S., provides that CUPs must be granted for a period of 20 years if:

- Requested by the applicant; and
- There is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP may require a permittee to produce a compliance report every 10 years. A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

Effect of Proposed Changes

The CS amends s. 373.236, F.S., to provide that in order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a seawater desalination plant or other sources that are resistant to drought, unless the reductions are conditions of a permit or funding agreement with the WMD. Except as otherwise provided, this does not limit the existing authority of DEP or the governing board of a WMD to modify or revoke a CUP.

Section 11 amends s. 373.308, F.S., relating to well permits issued by water management districts.

Present Situation

Section 373.308, F.S., directs the DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair and abandonment of water wells. The DEP may prescribe minimum standards for the location, construction, repair and abandonment of water wells throughout all or part of the state. Some local governments also have certain ordinances pertaining to water wells, which have resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The CS amends s. 373.308, F.S., to provide that upon authorization from the DEP, issuance of well permits is the sole responsibility of the WMDs or a delegated local government, and other government entities may not impose additional or duplicate requirements or fees, or establish a separate program for permitting the location, abandonment, boring or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 12 amends s. 373.323, F.S., relating to licenses for water well contractors.

Present Situation

Any person that wishes to engage in business as a water well contractor must obtain a license from a WMD. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing or abandoning water wells; and
- Show certain proof of experience.[28]

Section 373.323(11), F.S., provides that licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water well systems.

Effect of Proposed Changes

The CS amends s. 373.323, F.S., to provide that licensure under this section by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision.

The CS also expands the types of systems that licensed water well contractors may install pumps, tanks and water conditioning equipment on. The CS changes the systems water well contractors can work on from "water well systems" to "water systems."

Section 13 amends s. 373.406, F.S., relating to surface water management and storage.

Present Situation

Part IV of ch. 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the DEP and the WMDs for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

[28] Section 373.323, F.S.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant work and works. Individually and collectively these terms are referred to as "surface water management systems."

Certain activities are exempt by statute from the need to obtain an ERP under state law or by agency rule. Section 373.406, F.S., provides for several exemptions from the regulatory requirements in ch. 373, F.S. The DEP's rules also provide for certain exemptions and general permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Some examples of exempt activities are:

- Construction, repair and replacement of private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair and replacement of seawalls and riprap in artificial waterways;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of noticed general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to:

- Construction and modification of boat ramps of certain sizes;
- Installation and repair of riprap at the base of existing seawalls;
- Installation of culverts associated with stormwater discharge facilities; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP permit.

Effect of Proposed Changes

The CS amends s. 373.406, F.S., to include the following exemptions from regulation under Part IV of ch. 373, F.S.:

- Construction, operation or maintenance of any wholly owned, manmade ponds or drainage ditches constructed entirely in uplands; and
- Activities affecting wetlands created solely by the unreasonable and negligent flooding or interference with the natural flow or surface water caused by an adjoining landowner.

Section 14 amends s. 373.701, F.S., relating to cooperative water planning efforts.

Present Situation

Section 373.701, F.S., provides that it is the policy of the Legislature to:

- Promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
- Provide that those waters be managed on a state and regional basis; and
- Provide that cooperative efforts between municipalities, counties, WMDs, and DEP are mandatory in order to meet the water needs.

Effect of Proposed Changes

The CS amends s. 373.701, F.S., to provide that cooperative water planning efforts include utility companies, private landowners, water consumers, and the DACS. The CS also encourages municipalities, counties, and special districts to create multijurisdictional water supply entities.

Section 15 amends s. 373.703, F.S., relating to water supply planning duties or the WMDs.

Present Situation

Section 373.703, F.S., provides for certain powers and duties of the governing board of a WMD which include, but are not limited to, the following:

- To engage in planning to assist counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.
- To assist counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.
- To join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance.

Effect of Proposed Changes

The CS amends s. 373.703, F.S., to add "self-suppliers" to the list of entities the governing boards of WMDs must engage in planning in order to assist in meeting water supply needs. The CS also adds self-suppliers to the list of entities the governing boards must assist in meeting water supply needs. In addition, the CS adds self-suppliers to the list of entities the governing boards can join with for the purpose of carrying out its powers, and can contract with to finance acquisitions, construction, operation, and maintenance, provided such contracts are consistent

with the public interest. The CS defines the term "self-supplier" to mean persons who obtain surface or groundwater from a source other than a public water supply.

Sections 16 and 26 amend ss. 373.309 and 570.085, F.S., respectively, relating to agricultural water supply planning.

Present Situation

The WMDs are required to conduct water supply needs assessments. If a WMD determines that existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period for a particular water supply planning region, it must prepare a regional water supply plan.[29] Regional water supply plans must be based on at least a 20-year planning period.[30] The plan must contain:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy;
- The impacts on the public interest, costs, natural resources, etc.;
- Technical data and information;
- Any minimum flows and levels (MFLs) established for the planning area;
- The water resources for which future MFLs must be developed; and
- An analysis of where variances may be used to create water supply development or water resource development projects.[31]

Regional water supply plans include projected water supply needs for all users, including agriculture. The WMDs employ different methods in making such projections for agricultural users and use a combination of common and unique data sources. The DACS participates in the regional water supply planning process and can provide input regarding agricultural water supply demand projection, but has no formal role in determining future water supply needs for agriculture.[32]

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.[33] Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water.

[29] Section 373.709(1), F.S.
[30] Section 373.709(2), F.S.
[31] *Id.*
[32] DACS, *Senate Bill 1684 Analysis* (Mar. 13, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).
[33] DEP, *Regional Water Supply Planning*, www.dep.state.fl.us/water/waterpolicy/rwsp.htm (last visited Mar. 30, 2013).

Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Pursuant to s. 570.085, F.S., the DACS must establish an agricultural water conservation program that includes:

- A cost-share program between the U.S. Department of Agriculture and other federal, state, regional and local agencies for irrigation system retrofit and the application of mobile irrigation laboratory evaluations for water conservation;
- The development and implementation of voluntary interim measures of best management practices that provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the DACS must consult with the DEP and the WMDs; and
- Provide assistance to the WMDs in the development and implementation of a consistent methodology for the efficient allocation of water for agricultural irrigation.

Effect of Proposed Changes

Section 16 of the CS amends s. 303.709, F.S., providing that a WMD must include the DACS in its regional water supply planning process. The WMD must also include in the water supply development component of its regional water supply plan, the agricultural demand projections used for determining the needs of agricultural self-suppliers based on the best available data. In determining the best available data for agricultural self-supplied water needs, the WMD must use the data indicative of future water supply demands provided by the DACS pursuant to s. 570.085, F.S., which is amended by this CS, directing the DACS to establish a water supply planning program.

The CS directs the WMDs to describe any deviation or adjustment of the data provided by DACS and present the original data along with the adjusted data.

Section 26 of the CS amends s. 570.085, F.S., directing the DACS to establish an agricultural water supply planning program that includes the following:

- The development of data indicative of future agricultural water supply demands which must be:
  - Based on at least a 20-year planning period;
  - Provided to each WMD; and
  - Considered by each WMD when developing WMD water management plans.
- The data on future agricultural water supply demands, which are provided to each WMD, must include, but are not limited to:
  - Applicable agricultural crop types or categories;
  - Historic, current and future estimates of irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumption used to generate the spatial acreage estimates and projections;
  - Crop type or category water use coefficients for a 1-in-10 year drought average used in calculating historic, current and future water demands, including data, methods and assumptions used to generate the coefficients. Estimates of historic and current water

demands must take into account actual metered data when available. Projected future water demands must incorporate appropriate potential water conservation factors based upon data collected as part of the DACS's agricultural water conservation program pursuant to s. 570.085(1), F.S.; and
    - An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply needs.
- In developing the data of future agricultural water supply needs, the DACS must consult with the agricultural industry, the University of Florida's institute of Food and Agricultural Sciences, the DEP, the WMDs, the National Agricultural Statistics Service and the U.S. Geological Survey.
- The DACS must coordinate with each WMD to establish a schedule for provision of data on agricultural water supply needs.

Section 17 amends s. 376.313, F.S., relating to the nonexclusiveness of remedies and individual causes of action for damages under ss. 376.30 to 376.317, F.S.

Present Situation

Section 376.313(3), F.S., provides that nothing contained in ss. 376.30-376.317, F.S., (relating to petroleum storage discharges, dry cleaning facilities and wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred to sections.

Effect of Proposed Changes

The CS amends s. 376.313(3), F.S., to provide that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., that is not regulated or authorized pursuant to ch. 403, F.S. (relating to environmental control policies that conserve state water, protect and improve water quality for consumption and maintain air quality to protect human health). This serves to limit the causes of action currently available under s. 376.313, F.S.

Section 18 amends s. 403.031, F.S., regarding the definition of the term "beneficiary."

Present Situation

Section 403.031, F.S., provides definitions for ch. 403, F.S. Section 403.0893, F.S., provides that a county or municipality may:

- Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.;
- Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.; or

- Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, F.S., one or more stormwater management system benefit areas.

Effect of Proposed Changes

The CS creates s. 403.031(22), F.S., to provide a definition for the term "beneficiary" to mean any person, partnership, corporation, business entity, charitable organizations, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law. This definition will make clear the entities that a local government can collect stormwater fees from.

Section 20 amends s. 403.0872, F.S., relating to operation permits for majority sources of air pollution and fee calculations.

Present Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law to regulate air emissions from stationary and mobile sources. The law authorizes the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants.34

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[35] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs, and then assist the state and local governments in developing their programs.[36] All major stationary sources (power plants, pulp mills and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and as promulgated in ch. 62-4, F.A.C., the DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., provides that each source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from the DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee is assessed based upon the source's previous year's emissions and is calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, and multiplying that by the annual hours of operation allowed by permit conditions provided, however, that:

[34] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[35] *See* EPA, *Air Pollution Operating Permit Program Update: Key Features and Benefits*, http://www.epa.gov/oaqps001/permits/permitupdate/index.html (last visited Mar. 29, 2013).
[36] *Id.*

1. The license fee factor is $25 or another amount determined by DEP rule, which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the Secretary of Environmental Protection affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may not exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.
4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not operational.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a DEP-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.
7. If the DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the DEP shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. The DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The DEP may waive the collection of underpayment and is not required to refund overpayment of

the fee, if the amount due is less than 1 percent of the fee, up to $50. The DEP may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty or interest.

8. Notwithstanding the computational provisions of s. 403.0872(a), F.S., the annual operation license fee for any source subject to this section cannot be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., shall not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, the DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits are considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. The DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a., F.S., for the construction of a new major source of air pollution that will be subject to the permitting requirements of s. 403.0872, F.S., once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a.[37]

Effect of Proposed Changes

The CS amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1. In addition, the CS provides that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit. This will result in a decrease in fees charged since it is likely that most permitted entities are not discharging up to their permitted limit.

The CS deletes subparagraphs 2-5 from s. 403.0872(11), F.S.

The CS provides that if the DEP has not received the fee by March 1, instead of February 15, the permittee must be sent a written warning concerning the consequences of failing to pay the fee by April 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 21 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Present Situation

Section 403.7046, F.S., governs the regulation of recovered materials. It allows the DEP to establish a system whereby recovered materials dealers must be certified by the DEP. At a

[37] Section 403.0872(11)(a)1.-9., F.S.

minimum, the information that needs to be collected from a recovered materials dealer must include:

- The amount and types of recovered materials handled, and
- The amount and disposal site, or the name of the person with whom the disposal was arranged, of any solid waste generated by the recovered materials facility and subsequently disposed of.[38]

It also provides that prior to engaging in business within the jurisdiction of a local government, the dealer must provide the government with the DEP certification and must register with the local government. Local governments are limited to collecting the following information:

- Name, including the owner or operator of the dealer;
- If the dealer is a business entity:
  - Its general or limited partners; and
  - Its corporate officers and directors;
- Its permanent place of business;
- Evidence of its certification from the DEP; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of the section.

Local governments may also impose yearly reporting requirements which include:

- Requiring the deale3r to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

There are protections for trade secrets and any information that constitutes a trade secret is to be kept confidential.[39]

Effect of Proposed Changes

The CS amends s. 403.7046, F.S., providing that a local government that receives a registration application from a recovered materials dealer must act on the application within 90 days and that while it is under review, the locality may not use the registration information to unfairly compete with the applicant.

Section 22 amends s. 403.813, F.S., relating to conditions under which certain permits are not required for seawall restoration.

[38] Section 403.7046(1), F.S.
[39] Section 403.7046(3)(b), F.S.

Present Situation

Section 403.813(1), F.S., provides that a permit is not required for the restoration of a seawall at its previous locations or upland of, or within 12 inches waterward of, its previous location.

Effect of Proposed Changes

The CS amends s. 403.813, F.S., to provide that a permit is not required for the restoration of a seawall at its previous location or upland of that location, or within 18 inches, instead of 12 inches, waterward of its previous location.

Section 24 amends s. 403.973, F.S., relating to expedited permitting of natural gas pipelines.

Present Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the secretary of the DEP must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where more than one state agency action is challenged, the governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Effect of Proposed Changes

The CS amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 25 amends s. 570.813, F.S., to conform a cross-reference.

Section 27 provides an effective date of July 1, 2013

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 4 Expanding use of the phosphate tax for education could benefit the private sector, but the benefits cannot be quantified.

Sections 5 and 23 The Special Event promoter would benefit from the CS's structuring of lease fees around the actual size of the preemption and the flexibility provided for restructuring of temporary structures. The public would not benefit from this reduction because the promoter charges the vendor to participate in the event. Substantial savings are expected, but cannot be calculated at this time.

Section 6 There would be a positive impact from the annual reduction or elimination of the annual fee for leases of sovereignty submerged land.

Section 7 The private sector will benefit from reduced lease fees related to docks and piers. The savings cannot be calculated at this time.

Section 9 According to the DEP, if a private sector entity is a CUP applicant, the proposed language may result in increased costs resulting from litigation. The CS envisions a WMD issuing proposed affirmative agency action for two applications, even though there is not adequate water for both. Therefore, it would appear that a private entity seeking a permit would either be forced to challenge a competing permit or be subject to such a challenge.
Section 11 The CS would have a positive effect on water well contractors by eliminating the requirement to obtain a separate local government water well construction permit, including any required fees.

Section 12 The CS would have a positive effect on water well contractors by eliminating the requirement to obtain any local government water well contractor licenses. It also expands the license to apply to all water systems, not just water well systems. The impact of this expansion is unknown and may create additional competition in the water systems business.

Section 13 The CS will ease some of the regulatory requirements for activities covered by the CS. This will result in a positive but indeterminate affect on the private sector.

Sections 16 and 26 The DACS intends to contract out the work needed to develop agricultural demand projections. The bill may have a positive effect on the private sector to the extent contracts are awarded to the private sector.

Section 17 Currently, if a person or entity is damaged as a result of a discharge or other condition of pollution covered in ss. 376.30 – 376.317, F.S., they have a cause of action to sue for damages. This CS limits those causes of action to situations where the offending party's activities are not regulated or authorized pursuant to ch. 403.

Section 20 According to the DEP, this legislation will save over 400 of Florida's manufacturing and industrial businesses an estimated $2 million per year. Approximately $1.4 million would be saved in Title V permit fees because they would be paying fees based on their "actual emissions" instead of their "adjusted allowable emissions." Synchronizing the Title V fee and annual operating report requirements will save the sources an additional estimated $600,000 by eliminating the need to compute and submit different emission calculations.

Section 21 The CS will provide more certainty for recovered materials dealers when applying for permits to operate with a locality. Ultimately, this will have a positive but indeterminate impact.

Section 24 The CS will have a sizeable impact on entities that wish to build natural gas pipelines in the state. The effect is indeterminate. Giving one party the option to force summary judgment could have a positive but indeterminate impact on judicial awards for parties. For parties suing the entities building natural gas pipelines, summary judgment could result in an indeterminate effect on awards.

C. Government Sector Impact:

Section 1 Reductions in paper due to electronic submissions should save the DEP an indeterminate amount of money.

Section 4 By expanding the definition of "phosphate related expenses," local governments should have more flexibility in how they spend phosphate related fees, taxes and penalties.

Sections 5 and 23 According to DEP's analysis, an enhancement to the billing database would cost an estimated $13,000. The fees for special event fees are calculated based on the number of event days times the annual rent, or five percent of any revenue generated from the special event, whichever is greater. The loss of revenue would be approximately $187,000 annually, based on the average of the past seven fiscal years. The lease term would exceed the standard term of five years.

Section 6 According to the DEP, the non-recurring effects are estimated at $13,000 for enhancements to the billing database. Additionally, of the 2,800 leases, 49 percent would potentially qualify to have their fees reduced based on the bill language. The proposed changes will lead to an undetermined negative fiscal impact to the Internal Improvement Trust Fund. Currently, only those facilities that are 90 percent open to the public and whose slips are for rent receive the 30 percent discount. The CS language does not state the requirement to rent slips in order to receive the discount which leaves an open interpretation of which facilities would qualify for the 30 percent discount.

Based on the minimum loss of general revenue, there will be an annual loss of approximately $5,623 in state taxes and $469 in County Discretionary Tax.

Section 7 Government entities will see a reduction in lease fees from certain private docks and piers. The negative effect on revenues is indeterminate.

Section 9 According to the DEP, there would be costs incurred due to the rulemaking requirement. The DEP's estimate for rulemaking is $50,000 for marina and mooring field expansion rules. After the general permits are developed, there would be some loss in permit fees from the Permit Fee Trust Fund. The DEP is expected to absorb any minor negative impact with existing resources.

Section 10 According to the DEP, local governments may avoid some transactional costs associated with a permit modification.

Section 11 According to the DEP, there are three WMDs that currently delegate all or part of their well construction program to local governments. The CS allows continued delegation of the Part II, ch. 373, F.S., well construction program to counties. The South Florida Water Management District has one delegation to a municipality. If this delegation were discontinued, the WMD may need additional staffing to conduct this permitting.

Section 12 Local governments would lose any fees currently charged as part of a local government requirement to obtain a local water well contractor license.

Section 13 According to the DEP, this section could negatively impact the Permit Fee Trust Fund substantially.

Sections 16 and 26 The WMDs would have a reduced workload from having the DACS provide demand projections for agricultural water use.

The DACS has included $1.5 million in their budget request to establish the program to develop the agricultural demand projections to provide to the water management districts. It is assumed that at least a portion of this cost will be recurring.

Section 20 Effect on DEP
According to the DEP, the legislation would enable the DEP to synchronize the federally required emissions computation and reporting obligation with the Title V air operation permit fee calculation requirement. This will save the DEP the equivalent workload of one FTE it estimates that goes into reviewing and processing two separate calculations that serve the same underlying purpose, which is to identify emissions.

Pursuant to s. 403.0873, F.S., all permit fees received under the DEP's federally approved Title V permitting program are deposited in the Air Pollution Control Trust Fund. The deposited fees must be used for the sole purpose of paying the direct and indirect costs of the DEP's Title V permitting program, which are enumerated under federal law found in 40 CFR part 70. The DEP estimates those costs to be $5.3 million in 2013 and they are estimated to decline to $4.9 million by 2018. The trust fund currently has a surplus balance of $4.1 million. Even with the estimated $1.4 million annual reduction in fee receipts that would occur as a result of this CS, the DEP estimates that the surplus will increase to $4.9 million by 2018. Because of several efficiency increases that have already occurred in the DEP's air program, the DEP is positioned to continue to pay the costs of its Title V program and grow its surplus to one year's expenses by 2018 if this CS passes. In the event that unforeseeable circumstances arise that cause the program costs to exceed revenue in the future, the DEP can adjust its fee factor by rule as provided under s. 403.0872, F.S.

Effect on Local Governments
The Title V permit fees in the Air Pollution Control Trust fund must be used for the sole purpose of paying the direct and indirect costs of the DEP's federally approved Title V permitting program. If the DEP finds it is fiscally responsible to do so, it may contract with local governments (or any other public or private entity) to perform Title V program services on the DEP's behalf. The DEP currently contracts with seven local governments to perform certain Title V program services. The above agency impact projections accommodate the maintenance of the 2012 contracts with these entities, so there are no local government impacts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 6 According to the DEP, the bill language does not state the requirement to rent slips in order to receive the discount which leaves an open interpretation of which facilities would qualify for the 30 percent discount.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on April 2, 2013:

- Adds two sections related to the electronic submission of forms to the DEP, authorizing the DEP to adopt rules regarding electronic submission of forms to the DEP;
- Adds one section that expands the types of activities qualifying as "phosphate-related expenses";
- Regarding special events on sovereignty submerged lands, the CS expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The CS also provides that the lease or consent of use should include a lease fee (if applicable) based solely on the period and size of the preemption. The lease or consent of use should also include conditions to reconfigure temporary structures within the lease area;
- Rather than amend s. 403.814, F.S., as in the original bill, the CS creates s. 403.8141, F.S. The CS expands the allowable period of leases from 30 to 45 days. The CS also removes provisions from the original bill limiting the number of seagrass studies and removes a provision requiring an excess of 25 percent of the preempted area from a previous lease to be added to a new lease to accommodate economic expansion;
- Removes a provision stipulating that dock lease fees for standard term leases are 6 percent of the annual gross dockage income;
- Adds a section relating to the lease of sovereignty submerged lands for private residential docks. The CS provides that lease fees are not required for private residential single-family docks or private residential multifamily docks, given certain circumstances;
- Removes an existing provision directing the DEP to adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities in s. 373.118, F.S. The CS also removes existing provisions from s. 373.118, F.S., that limit general permits for marinas and mooring fields authorized under the general permits described in that section of statute to an area of 50,000 feet or less and that require a marina or mooring field permitted under that section of statute to obtain Clean Marina Program status prior to opening for operation and to maintain it for the life of the facility;

- Adds a provision authorizing the Board of Trustees to delegate authority to the DEP to issue leases for mooring fields under the general permit described in s. 373.118, F.S.;
- Adds a section that limits the ability of a WMD to reduce existing permitted allocations of water for drought resistant water supplies, including water desalination plants;
- Adds a provision to the bill stating that the issuance of well permits is the sole responsibility of the WMDs. The CS adds that a local government may have the responsibility for permitting water wells delegated to it;
- Removes a section from the bill defining the term "mean annual flood line";
- Removes a provision from the bill exempting water control districts operating pursuant to ch. 298, F.S., from further wetland or water quality regulations imposed pursuant to chapters 125, 163, and 166, F.S., under certain conditions;
- Adds a section that provides that cooperative water planning efforts include utility companies, private landowners, water consumers and the DACS. It also encourages municipalities, counties and special districts to create multijurisdictional water supply entities;
- Adds a section that includes "self-suppliers" to the list of entities the WMDs must help with meeting water supply needs;
- Adds a provision directing the WMDs, in developing water supply plans, to describe any adjustment or deviation from information provided by the DACS regarding agricultural water demand projections and present the original data along with the adjusted data;
- Makes changes to section 18 of the bill to conform language to CS/SB 948, regarding agricultural water supply planning;
- Removes a section from the bill regarding testing procedures for measuring deviations from water quality standards;
- Adds a section defining the term "beneficiary," as it relates to what entities a local government can collect stormwater fees from; and
- Adds a section that prevents localities from competing with recovered materials dealers when a dealer submits a registration application with the locality and that locality has it under review. It also directs localities to process such applications within 90 days.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Altman

592-03473B-13 20131684c1

A bill to be entitled

An act relating to environmental regulation; amending s. 20.255, F.S.; authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending ss. 125.022 and 166.033, F.S.; providing requirements for the review of development permit applications by counties and municipalities; amending s. 211.3103, F.S.; revising the definition of "phosphate-related expenses" to include maintenance and restoration of certain lands; amending s. 253.0345, F.S.; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; providing conditions for fees relating to such leases and letters of consent; creating s. 253.0346, F.S.; defining the term "first-come, first-served basis"; providing conditions for the discount and waiver of lease fees and surcharges for certain marinas, boatyards, and marine retailers; providing applicability; amending s. 253.0347, F.S.; exempting lessees of certain docks from lease fees; amending s. 373.118, F.S.; deleting provisions requiring the department to adopt general permits for public marina facilities; deleting certain requirements under general permits for public marina facilities and mooring fields; limiting the number of vessels for mooring fields authorized under such permits; amending

Florida Senate - 2013 CS for SB 1684

592-03473B-13 20131684c1

s. 373.233, F.S.; clarifying conditions for competing consumptive use of water applications; amending s. 373.236, F.S.; prohibiting water management districts from reducing certain allocations as a result of activities relating to sources that are resistant to drought; providing an exception; amending s. 373.308, F.S.; providing that issuance of well permits is the sole responsibility of water management districts; prohibiting government entities from imposing requirements and fees and establishing programs for installation and abandonment of groundwater wells; amending s. 373.323, F.S.; providing that licenses issued by water management districts are the only water well construction licenses required for construction, repair, or abandonment of water wells; authorizing licensed water well contractors to install equipment for all water systems; amending s. 373.406, F.S.; exempting specified ponds, ditches, and wetlands from surface water management and storage requirements; amending s. 373.701, F.S.; providing a legislative declaration that efforts to adequately and dependably meet water needs; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; amending s. 373.703, F.S.; requiring the governing boards of water management districts to assist self-suppliers, among others, in meeting water supply demands; authorizing the governing boards to contract with self-suppliers for

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the purpose of carrying out its powers; amending s.373.709, F.S.; requiring water management districts to coordinate and cooperate with the Department of Agriculture and Consumer Services for regional water supply planning; providing criteria and requirements for determining agricultural water supply demand projections; amending s. 376.313, F.S.; holding harmless a person who discharges pollution pursuant to ch. 403, F.S.; amending s. 403.031, F.S.; defining the term "beneficiaries"; amending s. 403.061, F.S.; authorizing the department to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending s. 403.0872, F.S.; extending the payment deadline of permit fees for major sources of air pollution and conforming the date for related notice by the department; revising provisions for the calculation of such annual fees; amending s. 403.7046, F.S.; revising requirements relating to recovered materials; amending s. 403.813, F.S.; revising conditions under which certain permits are not required for seawall restoration projects; creating s. 403.8141, F.S.; requiring the Department of Environmental Protection to establish general permits for special events; providing permit requirements; amending s. 403.973, F.S.; authorizing expedited permitting for natural gas pipelines, subject to specified certification; providing that natural gas pipelines are subject to certain requirements;

providing that natural gas pipelines are eligible for certain review; amending s. 570.076, F.S.; conforming a cross-reference; amending s. 570.085, F.S.; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program; providing program requirements; providing an effective date.

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

Section 1. Subsection (8) is added to section 20.255, Florida Statutes, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(8) The department may adopt rules requiring or incentivizing electronic submission of forms, documents, fees, or reports required for permits under chapter 161, chapter 253, chapter 373, chapter 376, or chapter 403. The rules must reasonably accommodate technological or financial hardship and must provide procedures for obtaining an exemption due to such hardship.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional

information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit

condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit

that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Paragraph (c) of subsection (6) of section 211.3103, Florida Statutes is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry, including environmental education, reclamation or restoration of phosphate lands, maintenance and restoration of reclaimed lands and county

owned environmental lands which were formerly phosphate lands, community infrastructure on such reclaimed lands and county owned environmental lands which were formerly phosphate lands, and similar expenses directly related to support of the industry.

Section 5. Section 253.0345, Florida Statutes, is amended to read:

253.0345 Special events; submerged land leases.—

(1) The trustees may ~~are authorized to~~ issue leases or consents of use ~~or leases~~ to riparian landowners, special ~~and~~ event promoters, and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned ~~government owned~~ upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use shall be notified by certified mail of any request for such a lease or consent of use before ~~prior to~~ approval by the trustees. The trustees shall balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether ~~if~~ a lease or consent of use should be executed over the objection of adjacent riparian owners. This section does ~~shall~~ not apply to structures for viewing motorboat racing, high-speed motorboat contests, or high-speed displays in waters where manatees are known to frequent.

(2) A lease or consent of use for a ~~Any~~ special event under ~~provided for in~~ subsection (1):

(a) Shall be for a period not to exceed 45 ~~30~~ days and a

duration not to exceed 10 consecutive years.

(b) Shall include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to the department of the configuration and size of preemption within the lease area.

(c) The lease or letter of consent ~~of use~~ may ~~also~~ contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

(3) ~~Nothing in~~ This section does not ~~shall be construed to~~ allow any lease or consent of use that would result in harm to the natural resources of the area as a result of the structures or the activities of the special events agreed to.

Section 6. Section 253.0346, Florida Statutes, is created to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.—

(1) For purposes of this section, the term "first-come, first-served basis" means the facility operates on state-owned submerged land for which:

(a) There is not a club membership, stock ownership, equity interest, or other qualifying requirement.

(b) Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

(2) For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of

the slips are open to the public, a discount of 30 percent on the annual lease fee shall apply if dockage rate sheet publications and dockage advertising clearly state that slips are open to the public on a first-come, first-served basis.

(3) For a facility designated by the department as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program:

(a) A discount of 10 percent on the annual lease fee shall apply if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

(b) Extended-term lease surcharges shall be waived if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

4. Is available to the public on a first-come, first-served basis.

(c) If the facility is in arrears on lease fees or fails to comply with paragraph (b), the facility is not eligible for the discount or waiver under this subsection until arrears have been paid and compliance with the program has been met.

(4) This section applies to new leases or amendments to leases effective after July 1, 2013.

Section 7. Subsection (2) of section 253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)(a) A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

(b) If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

(c) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

(d) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.

(e) A lessee of sovereignty submerged land for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by the Board of Trustees of the Internal Improvement Trust Fund for the management of sovereignty submerged lands, whichever is greater.

(f) A lessee of sovereignty submerged land for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development providing for existing docks.

Section 8. Subsection (4) of section 373.118, Florida Statutes, is amended to read:

373.118 General permits; delegation.—

(4) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain ~~public marina facilities,~~ public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of

Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 379 ~~and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility~~. ~~Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over wetlands and other surface waters~~. Mooring fields authorized under such general permits may not exceed 100 vessels. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The department is authorized to have delegation from the Board of Trustees to issue leases for mooring fields that meet the requirements of this general permit. The department shall initiate the rulemaking process within 60 days after the effective date of this act.

Section 9. Subsection (1) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

(1) If two or more applications that ~~which~~ otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, and the governing board or department has deemed the application complete, the governing board or the department has ~~shall have~~ the right to approve or modify the

application which best serves the public interest.

Section 10. Subsection (4) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. In order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a water management district may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, sources that are resistant to drought, including, but not limited to, a seawater desalination plant, unless such reductions are conditions of a

permit with the water management district. Except as otherwise provided in this subsection, this subsection does ~~shall~~ not ~~be construed to~~ limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

Section 11. Subsection (1) of section 373.308, Florida Statutes, is amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from the department, issuance of well permits will be the sole responsibility of the water management district or delegated local government. Other government entities may not impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 12. Subsections (1) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business. Licensure under this part by a water management district shall be the only water well construction license required for the construction, repair,

or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 13. Subsections (13) and (14) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade farm ponds as defined in s. 403.927 constructed entirely in uplands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. This exemption does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under section 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

Section 14. Subsection (3) of section 373.701, Florida Statutes, is amended to read:

373.701 Declaration of policy.—It is declared to be the policy of the Legislature:

(3) Cooperative efforts between municipalities, counties, utility companies, private landowners, water consumers, water management districts, ~~and~~ the Department of Environmental Protection, and the Department of Agriculture and Consumer Services are necessary ~~mandatory~~ in order to meet the water needs of rural and rapidly urbanizing areas in a manner that will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from which ~~such~~ water is withdrawn. Such efforts should employ ~~use~~ all practical means of obtaining water, including, but not limited to, withdrawals of surface water and groundwater, reuse, and desalination, and will require ~~necessitate not only~~ cooperation and ~~but also~~ well-coordinated activities. Municipalities, counties, and special districts are encouraged to create multijurisdictional water supply entities or regional water supply authorities as authorized in s. 373.713 ~~or multijurisdictional water supply entities~~.

Section 15. Subsections (1), (2), and (9) of section 373.703, Florida Statutes, are amended to read:

373.703 Water production; general powers and duties.—In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to this chapter:

(1) Shall engage in planning to assist counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse

environmental effects of improper or excessive withdrawals of water from concentrated areas. As used in this section and s. 373.707, regional water supply authorities are regional water authorities created under s. 373.713 or other laws of this state. As used in part VII of this chapter, self-suppliers are persons who obtain surface or groundwater from a source other than a public water supply.

(2) Shall assist counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(9) May join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance, provided such contracts are consistent with the public interest. The contract may provide for contributions to be made by each party to the contract ~~thereto~~, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of resulting the benefits, services, and products ~~therefrom~~. The contracts may contain other covenants and agreements necessary and

appropriate to accomplish their purposes.

Section 16. Subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 373.709, Florida Statutes, are amended to read:

373.709 Regional water supply planning.—

(1) The governing board of each water management district shall conduct water supply planning for a ~~any~~ water supply planning region within the district identified in the appropriate district water supply plan under s. 373.036, where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and other affected and interested parties. The districts shall actively engage in public education and outreach to all affected local entities and their officials, as well as members of the public, in the planning process and in seeking input. During preparation, but before ~~prior to~~ completion of the regional water supply plan, the district shall ~~must~~ conduct at least one public workshop to discuss the technical data and modeling tools anticipated to be used to support the regional water supply plan. The district shall also hold several public meetings to communicate the status, overall conceptual intent, and impacts

of the plan on existing and future reasonable-beneficial uses and related natural systems. During the planning process, a local government may choose to prepare its own water supply assessment to determine if existing water sources are adequate to meet existing and projected reasonable-beneficial needs of the local government while sustaining water resources and related natural systems. The local government shall submit such assessment, including the data and methodology used, to the district. The district shall consider the local government's assessment during the formation of the plan. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section is ~~shall be~~ subject to s. 120.569. The governing board shall reevaluate the ~~such a~~ determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

(2) Each regional water supply plan must ~~shall~~ be based on at least a 20-year planning period and must ~~shall~~ include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses must ~~shall~~ be based upon meeting those needs for a 1-in-10-year drought event.

a. Population projections used for determining public water

supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.085. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of ~~alternative~~ water supply development project options ~~projects~~. If such users propose a

project to be listed as a ~~an alternative~~ water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must ~~shall~~ exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following must ~~shall~~ be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.707(8).

d. Identification of the entity that should implement each

project option and the current status of project implementation.

(3) The water supply development component of a regional water supply plan which deals with or affects public utilities and public water supply for those areas served by a regional water supply authority and its member governments within the boundary of the Southwest Florida Water Management District shall be developed jointly by the authority and the district. In areas not served by regional water supply authorities, or other multijurisdictional water supply entities, and where opportunities exist to meet water supply needs more efficiently through multijurisdictional projects identified pursuant to paragraph (2)(a), water management districts are directed to assist in developing multijurisdictional approaches to water supply project development jointly with affected water utilities, special districts, self-suppliers, and local governments.

Section 17. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 which was not authorized pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution

conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Section 18. Subsection (22) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Beneficiary" means any person, partnership, corporation, business entity, charitable organization, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law.

Section 19. Subsection (43) is added to section 403.061, Florida Statutes, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(43) Adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, or reports required for permits issued under chapter 161, chapter 253, chapter 373, chapter 376, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide

procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 20. Subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April

~~March~~ 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, ~~(~~except carbon monoxide~~)~~ and greenhouse gases, for which an allowable numeric emission limiting standard is specified in ~~allowed to be emitted per hour by specific condition of~~ the source's most recent construction or operation permit~~, times the annual hours of operation allowed by permit condition~~; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never

exceed $35.

~~2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.~~

~~3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.~~

~~4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.~~

~~5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department approved certified continuous emissions monitor or from an emissions monitoring method which has been~~

~~approved by the United States Environmental Protection Agency under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.~~

2.~~6.~~ The amount of each regulated air pollutant in excess of 4,000 tons per year ~~allowed to be~~ emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3.~~7.~~ If the department has not received the fee by March 1 ~~February 15~~ of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April ~~March~~ 1. If the fee is not postmarked by April ~~March~~ 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air

pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4.~~8.~~ Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5.~~9.~~ Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

(b) Annual operation license fees collected by the department must be sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program, which shall

consist of the following elements to the extent that they are reasonably related to the regulation of major stationary air pollution sources, in accordance with United States Environmental Protection Agency regulations and guidelines:

1. Reviewing and acting upon any application for such a permit.

2. Implementing and enforcing the terms and conditions of any such permit, excluding court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

7. Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

8. Any audits conducted under paragraph (c).

(c) An audit of the major stationary source air-operation permit program must be conducted 2 years after the United States Environmental Protection Agency has given full approval of the program to ascertain whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs as listed in paragraph (b). A program audit must be performed biennially after the first audit.

Section 21. Section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually

certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials; persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to the requirements of this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 119.07(1). For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b) Prior to engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its

certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. A registration application must be acted on by the local government within 90 days of receipt. During the pendency of the local government's review, a local government may not use the registration information to unfairly compete with the recovered materials dealer seeking registration. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting

or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules promulgated pursuant thereto.

(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local

government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

Section 22. Paragraph (e) of subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, ~~nothing in~~ this subsection does not relieve ~~relieves~~ an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a ~~any~~ water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches ~~1 foot~~ waterward of, their

previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

Section 23. Section 403.8141, Florida Statutes, is created to read:

403.8141 Special event permits.—The department shall issue permits for special events as defined in s. 253.0345. The permits must be for a period that runs concurrently with the letter of consent or lease issued pursuant to that section and must allow for the movement of temporary structures within the footprint of the lease area.

Section 24. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraph (g) is added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

(14)

(b) Projects identified in paragraph (3)(f) or paragraph (3)(g) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that,

notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 25. Subsection (2) of section 570.076, Florida Statutes, is amended to read:

570.076 Environmental Stewardship Certification Program.—The department may, by rule, establish the Environmental Stewardship Certification Program consistent with this section. A rule adopted under this section must be developed in consultation with state universities, agricultural organizations, and other interested parties.

(2) The department shall provide an agricultural certification under this program for implementation of one or more of the following criteria:

(a) A voluntary agreement between an agency and an

agricultural producer for environmental improvement or water-resource protection.

(b) A conservation plan that meets or exceeds the requirements of the United States Department of Agriculture.

(c) Best management practices adopted by rule pursuant to s. 403.067(7)(c) or s. 570.085(1)(b) ~~570.085(2)~~.

Section 26. Section 570.085, Florida Statutes, is amended to read:

570.085 Department of Agriculture and Consumer Services; agricultural water conservation and water supply planning.—

(1) The department shall establish an agricultural water conservation program that includes the following:

(a) ~~(1)~~ A cost-share program, coordinated where appropriate with the United States Department of Agriculture and other federal, state, regional, and local agencies, for irrigation system retrofit and application of mobile irrigation laboratory evaluations for water conservation as provided in this section and, where applicable, for water quality improvement pursuant to s. 403.067(7)(c).

(b) ~~(2)~~ The development and implementation of voluntary interim measures or best management practices, adopted by rule, which provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the department shall consult with the Department of Environmental Protection and the water management districts. Such rules may also include a system to assure the implementation of the practices, including recordkeeping requirements. As new information regarding efficient

agricultural water use and management becomes available, the department shall reevaluate and revise as needed, the interim measures or best management practices. The interim measures or best management practices may include irrigation retrofit, implementation of mobile irrigation laboratory evaluations and recommendations, water resource augmentation, and integrated water management systems for drought management and flood control and should, to the maximum extent practicable, be designed to qualify for regulatory incentives and other incentives, as determined by the agency having applicable statutory authority.

(c) ~~(3)~~ Provision of assistance to the water management districts in the development and implementation of a consistent, to the extent practicable, methodology for the efficient allocation of water for agricultural irrigation.

(2)(a) The department shall establish an agricultural water supply planning program that includes the development of appropriate data indicative of future agricultural water needs, which must be:

1. Based on at least a 20-year planning period.

2. Provided to each water management district.

3. Considered by each water management district in accordance with ss. 373.036(2) and 373.709(2)(a)1.b.

(b) The data on future agricultural water supply demands which are provided to each district must include, but need not be limited to:

1. Applicable agricultural crop types or categories.

2. Historic estimates of irrigated acreage, current estimates of irrigated acreage, and future projections of

irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumptions used to generate the spatial acreage estimates and projections.

3. Crop type or category water use coefficients for a 1-in-10 year drought and average year used in calculating historic and current water demands and projected future water demands, including data, methods, and assumptions used to generate the coefficients. Estimates of historic and current water demands must take into account actual metered data as available. Projected future water demands shall incorporate appropriate potential water conservation factors based upon data collected as part of the department's agricultural water conservation program pursuant to s. 570.085(1).

4. An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply needs.

(c) In developing the data on future agricultural water supply needs described in paragraph (a), the department shall consult with the agricultural industry, the University of Florida Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the water management districts, the United States Department of Agriculture, the National Agricultural Statistics Service, and the United States Geological Survey.

(d) The department shall coordinate with each water management district to establish a schedule for provision of data on agricultural water supply needs in order to comply with water supply planning provisions in ss. 373.036(2) and

373.709(2)(a)1.b.

Section 27. This act shall take effect July 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL:	CS/SB 1588
INTRODUCER:	Commerce and Tourism Committee and Senator Evers
SUBJECT:	Used Tires
DATE:	April 3, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.	Akhavein	Halley	AG	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1588 makes it unlawful for any used tire retailer to sell unsafe used tires. The bill provides conditions under which a used tire is considered unsafe, including if the tire:

- Is worn to 2/32 of an inch or less of tread depth;
- Has any damage that exposes the reinforcing plies of the tire;
- Has an improper repair, such as an improperly sealed puncture; a repair to the tread shoulder, belt edge, sidewall, or bead area; or a puncture repair larger than 1/4 of an inch; or
- Has its identification number defaced or removed.

The sale or offer of sale of an unsafe tire constitutes an unfair and deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.[1]

This bill creates general law not contained in a designated section of the Florida Statutes.

[1] *See* Part II, ch. 501, F.S.

II. Present Situation:

According to one estimate, approximately 10 percent of tires sold in the U.S. annually are used tires.[2] Used tires are generally less expensive for the consumer and provide a greater profit margin for the retailer.[3] Although federal regulations require tire manufacturers to mark each new tire with a tire identification number that indicates the week and year the tire was manufactured,[4] used tires are not subject to any federal standards.[5] Similarly, the sale of used tires is not regulated in Florida.

While there is no state regulation of used tires, the Rubber Manufacturers Association (RMA) has issued a tire industry service bulletin that lists conditions under which a used tire should never be installed on a vehicle. These conditions include:

- Any punctures or other penetrations, whether repaired or not. This is not meant to preclude the proper repair of a tire installed on a consumer's vehicle when the consumer is aware of the tire's history;
- Any innerliner or bead damage;
- Indication of internal separation, such as bulges or local areas of irregular/fast treadwear indicating possible tread or belt separation;
- Indication of run-flat, under inflated and/or overloaded damage (e.g., innerliner abrasion, mid- to upper sidewall abrasion and stamping deterioration, delamination, or discoloration, excessive tread shoulder wear, etc.);
- Any damage or wear exposing the body material of the tire — cuts, cracks, bulges, scrapes, ozone cracking/weather checking, impact damage, punctures, splits, snags, etc;
- Defaced or removed DOT tire identification number (TIN), which is located on the tire sidewall;
- Involved in a recall or a replacement program;
- Inadequate tread depth for continued service (i.e., nearly worn out). Tires with a tread depth of 2/32" or less at any point on the tire are worn out;
- Currently mounted on a rim that is bent, dented, cracked or otherwise damaged;
- Evidence of improper storage;
- Chemical, fire, excessive heat damage, or other environmental damage;
- Designated as a "scrap tire" or otherwise not intended for continued highway service;
- Evidence of prior use of tire repair sealant;
- Altered to look like new tires (e.g., a regrooved tread); and
- Labeled on the sidewall as "Not For Highway Use," "NHS," "For Racing Purposes Only," "Agricultural Use Only," "SL" (service limited agricultural tire), or any other indication that the tire is barred from use on public thoroughfares.[6]

---

[2] Safety Research & Strategies, *Used Tires: A Booming Business with Hidden Dangers*, 2007, *available at* http://www.safetyresearch.net/Library/Used_Tires.htm (last visited April 3, 2013).
[3] *Supra* note 1.
[4] 49 CFR §571.139.
[5] Ronald Montoya, *How Old – and Dangerous – Are Your Tires?* (Nov. 18, 2011) *available at* http://www.edmunds.com/car-care/how-old-and-dangerous-are-your-tires.html (last visited April 3, 2013).
[6] Rubber Manufacturers Association, Passenger and Light Truck Used Tires, *available at* http://www.rma.org/tire_safety/tire_maintenance_and_safety/used_tires (last visited April 3, 2013).

The RMA also offers criteria for proper used tire repair, including:

- Repairs should be limited to the tread area only;
- Punctures cannot be greater than 1/4 inch (6mm) in diameter;
- Repairs must be performed by removing the tire from the rim/wheel assembly to perform a complete inspection to assess all damage that may be present;
- Repairs cannot overlap; and
- A rubber stem, or plug, must be applied to fill the puncture and a patch must be applied to seal the inner liner. A common repair unit is a one-piece unit with a stem and patch portion. A plug by itself is an unacceptable repair.[7]

III. Effect of Proposed Changes:

Section 1 makes it unlawful for any used tire retailer to sell unsafe used tires. The bill excludes retailers who sell used tires for recapping. A used tire is considered unsafe if it:

- Is worn to 2/32 of an inch or less of tread depth;
- Has any damage that exposes the reinforcing plies of the tire;
- Has an improper repair, such as an improperly sealed puncture; a repair to the tread shoulder, belt edge, sidewall, or bead area; or a puncture repair larger than 1/4 of an inch;
- Has evidence that a temporary tire sealant has been used and there is no evidence of a subsequent proper repair;
- Has its identification number defaced or removed;
- Has inner liner or bead damage; or
- Has any indication of internal separation.

The sale or offer of sale of an unsafe tire constitutes an unfair and deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.

Section 2 provides that the bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[7] Rubber Manufacturers Association, Puncture Repair Procedures for Passenger and Light Truck Tires, *available at* http://www.rma.org/tire_safety/tire_maintenance_and_safety/tire_repair/ (last visited April 3, 2013).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent used tire retailers are currently selling used tires that would be considered unsafe under the bill, they may see a reduction in revenues or may be subject to civil penalties up to $10,000 and liability for damages in private civil suits.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) can be enforced either by a state attorney, the Department of Legal Affairs, or a private suit filed by an individual.[8] A state attorney or the Department of Legal Affairs may bring an action to enjoin the unfair practice or to recover actual damages on behalf of one or more harmed consumers.[9] Willful FDUTPA violations are subject to civil penalties up to $10,000 per violation.[10] Additionally, private suits under FDUTPA may recover actual damages, plus attorney's fees and court costs.[11]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on April 1, 2013:
The committee substitute:

- Corrects a misspelled word;
- Removes tires that have been recalled pursuant to federal regulations from being considered unsafe used tires under the bill;

[8] Sections 501.203(2), 501.211, F.S.
[9] Section 501.207, F.S.
[10] Section 501.2075, F.S.
[11] Section 501.211, F.S.

- Removes the civil penalty and distribution of fines into the General Inspection Trust Fund; and
- Makes the sale or offer for sale of unsafe used tires an unfair and deceptive trade practice under part II of ch. 501, F.S.

B. Amendments:

None.

230732

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Agriculture (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete line 13
and insert:
to sell unsafe used tires for the purpose of mounting on a vehicle as defined in s. 316.003. This section does not apply to a used

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 3
and insert:
unsafe used tires by used tire retailers under certain

230732

circumstances; providing an

313226

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Agriculture (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 38
and insert:
(3) A person who violates this section commits an unfair and

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 5 - 6
and insert:
tire; providing that a person who violates this section commits an unfair and

By the Committee on Commerce and Tourism; and Senator Evers

577-03304-13 20131588c1

A bill to be entitled

An act relating to used tires; prohibiting the sale of unsafe used tires by used tire retailers; providing an exception; providing what constitutes an unsafe used tire; providing that a person who sells or offers for sale an unsafe used tire commits an unfair and deceptive trade practice; providing an effective date.

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

Section 1. Sale of used tires.—

(1) It is unlawful for any used tire retailer in this state to sell unsafe used tires. This section does not apply to a used tire retailer who sells used tires for recapping.

(2) For purposes of this section, a used tire is considered unsafe if the tire:

(a) Is worn to 2/32 of an inch tread depth or less on any area of the tread;

(b) Has any damage exposing the reinforcing plies of the tire, including any cuts, cracks, bulges, punctures, scrapes, or wear;

(c) Has had an improper repair including:

1. Any repair made in the tread shoulder or belt edge area of the tire;

2. Any puncture that has not been sealed or patched on the inside and repaired with a cured rubber stem through to the outside of the tire;

3. A repair to the sidewall or bead area of the tire; or

4. A puncture repair of damage larger than one-quarter of

577-03304-13 20131588c1

an inch;

(d) Has evidence of prior use of a temporary tire sealant without evidence of a subsequent proper repair;

(e) Has its tire identification number defaced or removed;

(f) Has inner liner or bead damage; or

(g) Has an indication of internal separation, such as bulges or local areas of irregular tread wear.

(3) A person who sells or offers for sale an unsafe used tire in violation of this section commits an unfair and deceptive trade practice as defined in part II of chapter 501, Florida Statutes.

Section 2. This act shall take effect July 1, 2013.