

Tab 1 SB 512 by Negron; (Similar to CS/H 0293) Vessels						
306272	D	S	RCS	EP, Oelrich	Delete everything after	03/30 05:40 PM

Tab 2 SB 850 by Hays (CO-INTRODUCERS) Altman, Gaetz; (Compare to CS/1ST ENG/H 0663) State Forests						
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Tab 3 CS/SB 1174 by AG, Siplin (CO-INTRODUCERS) Lynn; (Similar to H 0421) Exemptions to Water Management Requirements						
820452	A	S	RCS	EP, Rich	Delete L.40 - 42:	03/30 05:40 PM
612756	A	S	RCS	EP, Latvala	Delete L.86 - 87:	03/30 05:40 PM

Tab 4 SB 1404 by Evers; (Compare to CS/CS/CS/1ST ENG/H 0991) Environmental Permitting						
975266	PCS	S		EP		04/11 05:41 PM
305080	PCS:A	S		EP, Dean	Delete L.645 - 650:	04/13 10:59 AM
714966	PCS:A	S	L	EP, Latvala	btw L.1212 - 1213:	04/14 08:19 AM
123930	PCS:A	S	L	EP, Latvala	Delete L.184 - 209.	04/14 08:19 AM
721256	PCS:A	S	L	EP, Latvala	Delete L.945 - 976.	04/14 08:19 AM
754684	PCS:A	S	L	EP, Sobel	Delete L.188 - 209:	04/14 08:49 AM
951764	PCS:A	S	L	EP, Dean	Delete L.470 - 473:	04/14 08:51 AM
887788	PCS:A	S	L	EP, Dean	Delete L.570 - 571:	04/14 08:52 AM
891122	PCS:A	S	L	EP, Dean	Delete L.582:	04/14 08:52 AM
588044	PCS:A	S	L	EP, Dean	Delete L.586 - 589:	04/14 08:52 AM
528796	PCS:A	S	L	EP, Dean	Delete L.552:	04/14 08:52 AM
464514	D	S	WD	EP, Latvala	Delete everything after	04/11 05:40 PM
320138	AA	S	WD	EP, Latvala	Delete L.362 - 388:	04/11 05:40 PM
813598	AA	S	WD	EP, Latvala	Delete L.542 - 551:	04/11 05:41 PM
436922	AA	S	WD	EP, Latvala	Delete L.626 - 687:	04/11 05:41 PM

Tab 5 SB 1514 by Latvala; (Identical to H 1001) Permitting of Consumptive Uses of Water						
684730	A	S	RCS	EP, Latvala	Delete L.184 - 185:	03/30 05:40 PM
363968	A	S	RCS	EP, Latvala	btw L.266 - 267:	03/30 05:40 PM
287570	A	S	RCS	EP, Latvala	Delete L.148 - 173:	03/30 05:40 PM
116348	A	S	WD	EP, Dean	Delete L.38 - 142.	03/30 05:40 PM
380672	A	S	WD	EP, Dean	Delete L.174 - 266.	03/30 05:40 PM
713016	A	S		EP, Latvala	Delete L.173:	03/30 10:08 AM
461200	A	S		EP, Latvala	Delete L.149:	03/30 10:08 AM

Tab 6 CS/SB 1698 by HR, Dean; (Compare to H 0013) Onsite Sewage Treatment and Disposal Systems						
370128	A	S	RCS	EP, Latvala	Delete L.338 - 355.	03/30 05:40 PM
602374	A	S	RCS	EP, Detert	Delete L.425 - 427:	03/30 05:40 PM
191566	A	S	RCS	EP, Dean	Delete L.428:	03/30 05:40 PM
893952	A	S	RCS	EP, Jones	btw L.528 - 529:	03/30 05:40 PM
394106	AA	S	RCS	EP, Latvala	Delete L.6 - 7:	03/30 05:40 PM
963910	A	S	RCS	EP, Dean	Delete L.544 - 545:	03/30 05:40 PM
767714	A	S	RCS	EP, Dean	Delete L.551 - 554:	03/30 05:40 PM

Tab 7 CS/SB 1290 by AG, Dean; (Similar to CS/CS/H 0949) Pest Control						
649592	A	S	RCS	EP, Dean	Delete L.138 - 142:	03/30 05:40 PM
346744	A	S	RCS	EP, Dean	Delete L.142:	03/30 05:40 PM
710404	A	S	RCS	EP, Dean	btw L.176 - 177:	03/30 05:40 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
ENVIRONMENTAL PRESERVATION AND CONSERVATION
Senator Dean, Chair
Senator Oelrich, Vice Chair

MEETING DATE: Wednesday, March 30, 2011

TIME: 1:30 —3:30 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Dean, Chair; Senator Oelrich, Vice Chair; Senators Detert, Jones, Latvala, Rich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 512 Negron (Similar CS/H 293)	Vessels; Revises penalty provisions for violation of navigation rules. Provides that such violations that do not constitute reckless operation of a vessel are noncriminal violations. Provides for increased penalties for certain noncriminal violations. Deletes a duplicate provision. Conforms a cross-reference to changes made by the act. Reenacts and amends provision relating to penalties, to incorporate changes made by the act in references thereto, etc. EP 03/17/2011 Temporarily Postponed EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0
2	SB 850 Hays (Compare H 663)	State Forests; Provides for Wounded Warrior special hunt areas for certain disabled veterans. Provides for funding. Provides eligibility requirements. MS 03/23/2011 Favorable EP 03/30/2011 Favorable BC	Favorable Yeas 6 Nays 0
3	CS/SB 1174 Agriculture / Siplin (Similar H 421)	Exemptions to Water Management Requirements; Revises an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands. Provides that the exemption applies to certain agricultural lands and does not apply to specified permitted activities. Provides exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions. Requires a specified memorandum of agreement between the department and each water management district, etc. AG 03/21/2011 Fav/CS EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDAEnvironmental Preservation and Conservation
Wednesday, March 30, 2011, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1404 Evers (Compare CS/H 991, H 1153, S 1718, S 1966)	Environmental Permitting; Authorizes the provision of certain notices under the Administrative Procedure Act via a link to a publicly available Internet website. Provides that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy by a local government is a valid and permitted land use. Authorizes expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs, etc. EP 03/30/2011 Temporarily Postponed CA AG BC	Temporarily Postponed
5	SB 1514 Latvala (Identical H 1001, Compare H 651)	Permitting of Consumptive Uses of Water; Requires consumptive use permits to be issued for a period of 20 years. Directs each water management district to consult with the Department of Environmental Protection to examine options for improving the coordination between the consumptive use permitting process and the water supply planning process by extending and reconciling certain permitting provisions. Requires each water management district to provide a report to the Governor and the Legislature, etc. EP 03/30/2011 Fav/CS AG BC	Fav/CS Yeas 6 Nays 0
6	CS/SB 1698 Health Regulation / Dean (Compare H 13, H 167, H 1479, S 82, S 130, S 168)	Onsite Sewage Treatment and Disposal Systems; Defines the term "bedroom." Provides for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property. Provides circumstances in which an onsite sewage treatment and disposal system is not considered abandoned. Provides for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system, etc. HR 03/28/2011 Fav/CS EP 03/30/2011 Fav/CS CA BC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environmental Preservation and Conservation
Wednesday, March 30, 2011, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1290 Agriculture / Dean (Similar CS/CS/H 949, Compare S 2076)	Pest Control; Provides rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means. Increases the minimum bodily injury and property damage insurance coverage required for pest control businesses. Provides for the certification of commercial wildlife trappers. Increases the minimum financial responsibility requirements for licensees that perform certain inspections, etc. AG 03/21/2011 Fav/CS EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
8	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated. Governing Board of the Northwest Florida Water Management District Roberts, George (Panama City Beach)	03/01/2014	Recommend Confirm Yeas 6 Nays 0

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 Environmental Preservation and Conservation Committee

BILL: CS/SB 512

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Negron

SUBJECT: Vessels

DATE: March 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the civil penalties for navigation rule violations that result in an accident but do not cause serious bodily injury or death, depending on the judge's discretion as follows:

- first offense up to \$500;
- second offense up to \$750 and;
- third offense up to \$1,000.

The penalty for a navigation violation that causes serious bodily injury or death is a second degree misdemeanor.

This CS amends sections 327.33, 327.73, 327.70, 327.72, and 327.731(1) of the Florida Statutes.

II. Present Situation:

Currently, under s. 327.33(3), F.S., all navigation rule violations are noncriminal infractions except those navigation rule violations that result in boating accidents. If a navigation rule violation results in a boating accident, the charge is increased from a noncriminal infraction to a misdemeanor of the second degree. When a reckless operation violation occurs the penalties are more severe and include a first degree misdemeanor charge, a maximum \$1,000 fine and up to a year in jail.

In accordance with s. 327.73, F.S., individuals charged with noncriminal infractions sign and accept a citation indicating a promise to appear in court or pay the civil penalty, by mail or in person, within 30 days. If the person elects to pay the civil penalty, he or she is deemed to have admitted the noncriminal infraction and waived the right to a hearing. Such admittance shall not be used as evidence in any other hearing. The amount of the civil penalty assessed for the noncriminal navigation rule violation is \$50 plus court specific additions if the violator elects to pay the fine without a court appearance. If the person elects to appear in court to plead the case, he/she has waived the limitations of the civil penalty. If the court determines the infraction has been committed, it may impose a civil penalty of up to \$500.¹

Section 327.731 F.S., requires any person who is convicted of two noncriminal infractions in a 12-month period to enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the Florida Fish and Wildlife Conservation Commission (FWC or Commission).

Anyone charged with a navigation rule violation that results in an accident is charged with a second degree misdemeanor. Upon the finding of guilt for a second degree misdemeanor, in accordance with s. 775.082, F.S., and s. 775.083, F.S., a person may be fined up to \$500 and/or subjected to imprisonment not to exceed 60 days, at the discretion of the judge. In addition to the punishment, a judge, in accordance with s. 775.089, F.S., can order restitution to a victim for damage or loss related to the defendant's criminal act. There is not a civil penalty provision that an individual may pay in person or mail-in for second degree misdemeanors in lieu of sentencing as described above for noncriminal infractions.

Per s. 327.731, F.S., mandatory education is required for anyone convicted under Chapter 327, F.S., of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, as defined in s. 327.30(2), F.S., or two noncriminal infractions in a twelve month period. Additionally, Commission rule 68D-36.106, F.A.C. (created under Legislative authority granted in s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and anyone convicted of any criminal boating violation to complete an additional online boating course. Reportable boating accidents include those that must be reported to law enforcement under s. 327.30(2), F.S. They include:

- accidents involving any kind of vessel if the accident involves a vessel capsizing;
- a vessel colliding with another vessel or object;

¹ Florida Fish and Wildlife Conservation Commission, *Senate Bill 512 Fiscal Analysis* (February 10, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation)

- a vessel sinking;
- serious personal injury (requiring more than basic first aid);
- death;
- disappearance of any person onboard under circumstances suggestive of a likelihood of death or injury; or
- damage to the vessel or any property in an aggregate amount greater than \$2000.00.

According to the FWC, from 2007-2010, there were 452 individuals cited for second degree misdemeanor violations of navigation rules that resulted in a boating accident. During the same time frame, there were 303 individuals cited for noncriminal infractions for navigation rule violations that did not result in a boating accident.

All civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund to be used for boating safety education purposes (see s. 327.73(8), F.S.). Also, the court assesses the costs payable to the Clerk for each noncriminal violation (see s. 327.73(11), F.S.).

Under s. 775.083(1), F.S., all fines collected for convictions of second degree misdemeanors are deposited into the county's Fine and Forfeiture Fund (established in section 142.01, F.S.) for use by the clerk of the circuit court in performing court-related functions.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S. and removes the criminal charge for those individuals who violate a navigation rule that results in an accident but does not cause serious bodily injury or death or rise to the level of reckless operation from a second degree misdemeanor to a noncriminal infraction.

Section 2 amends s. 327.73(1) and (5), F.S., to increase the civil penalty for individuals who violate a navigation rule that result in a boating accident and to provide for increased penalties for repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to \$500 for a first offense, up to \$750 for a second offense, and up to \$1000 for a third or subsequent offense.

Section 3 amends s. 327.70(2)(a)1., F.S. This is a technical change to remove an unneeded reference to reckless or careless operation of vessel in section 327.33(3)(b), F.S.

Section 4 amends s. 327.72, F.S., to incorporate changes to s. 327.73, F.S., by reference.

Section 5 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

Section 6 creates an effective date of October 1, 2011.

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:

The changes may increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders.

C. Government Sector Impact:

According to the FWC, there will be a fiscal impact because all civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund to be used for boating safety education purposes. The exact fiscal impact is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:**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 March 31, 2010:

The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the fines for navigational violations that result in an accident but do not cause bodily injury or death up to \$500 for the first offense, up to \$750 for the second offense, and up to \$1,000 for a third or subsequent offense.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Oelrich) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(3) Each person operating a vessel upon the waters of this state shall comply with the navigation rules.

(a) A person who violates ~~whose violation of~~ the navigation rules and the violation results in a boating accident causing serious bodily injury as defined in s. 327.353 or death, but the



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13 ~~whose~~ violation does ~~did~~ not constitute reckless operation of a
14 vessel, commits ~~is guilty of~~ a misdemeanor of the second degree,
15 punishable as provided in s. 775.082 or s. 775.083.

16 (b) A person who violates ~~whose violation of~~ the navigation
17 rules and the violation ~~does not result in a boating accident~~
18 ~~and~~ does not constitute reckless operation of a vessel commits
19 ~~is guilty of~~ a noncriminal violation as defined in s. 775.08,
20 punishable as provided in s. 327.73.

21 (c) Law enforcement vessels may deviate from the
22 navigational rules when such diversion is necessary to the
23 performance of their duties and when such deviation may be
24 safely accomplished.

25 Section 2. Subsections (1) and (5) of section 327.73,
26 Florida Statutes, are amended to read:

27 327.73 Noncriminal infractions.—

28 (1) Violations of the following provisions of the vessel
29 laws of this state are noncriminal infractions:

30 (a) Section 328.46, relating to operation of unregistered
31 and unnumbered vessels.

32 (b) Section 328.48(4), relating to display of number and
33 possession of registration certificate.

34 (c) Section 328.48(5), relating to display of decal.

35 (d) Section 328.52(2), relating to display of number.

36 (e) Section 328.54, relating to spacing of digits and
37 letters of identification number.

38 (f) Section 328.60, relating to military personnel and
39 registration of vessels.

40 (g) Section 328.72(13), relating to operation with an
41 expired registration.



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- 42 (h) Section 327.33(2), relating to careless operation.
- 43 (i) Section 327.37, relating to water skiing, aquaplaning,
44 parasailing, and similar activities.
- 45 (j) Section 327.44, relating to interference with
46 navigation.
- 47 (k) Violations relating to boating-restricted areas and
48 speed limits:
- 49 1. Established by the commission or by local governmental
50 authorities pursuant to s. 327.46.
- 51 2. Speed limits established pursuant to s. 379.2431(2).
- 52 (l) Section 327.48, relating to regattas and races.
- 53 (m) Section 327.50(1) and (2), relating to required safety
54 equipment, lights, and shapes.
- 55 (n) Section 327.65, relating to muffling devices.
- 56 (o) Section 327.33(3)(b), relating to a violation of
57 navigation rules:-
- 58 1. That does not result in an accident; or
- 59 2. That results in an accident not causing serious bodily
60 injury or death, for which the penalty is:
- 61 a. For a first offense, up to a maximum of \$500.
- 62 b. For a second offense, up to a maximum of \$750.
- 63 c. For a third or subsequent offense, up to a maximum of
64 \$1,000.
- 65 (p) Section 327.39(1), (2), (3), and (5), relating to
66 personal watercraft.
- 67 (q) Section 327.53(1), (2), and (3), relating to marine
68 sanitation.
- 69 (r) Section 327.53(4), (5), and (7), relating to marine
70 sanitation, for which the civil penalty is \$250.



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71 (s) Section 327.395, relating to boater safety education.

72 (t) Section 327.52(3), relating to operation of overloaded
73 or overpowered vessels.

74 (u) Section 327.331, relating to divers-down flags, except
75 for violations meeting the requirements of s. 327.33.

76 (v) Section 327.391(1), relating to the requirement for an
77 adequate muffler on an airboat.

78 (w) Section 327.391(3), relating to the display of a flag
79 on an airboat.

80 (x) Section 253.04(3)(a), relating to carelessly causing
81 seagrass scarring, for which the civil penalty upon conviction
82 is:

83 1. For a first offense, \$50.

84 2. For a second offense occurring within 12 months after a
85 prior conviction, \$250.

86 3. For a third offense occurring within 36 months after a
87 prior conviction, \$500.

88 4. For a fourth or subsequent offense occurring within 72
89 months after a prior conviction, \$1,000.

90

91 Any person cited for a violation of any ~~such~~ provision of this
92 subsection shall be deemed to be charged with a noncriminal
93 infraction, shall be cited for such an infraction, and shall be
94 cited to appear before the county court. The civil penalty for
95 any such infraction is \$50, except as otherwise provided in this
96 section. Any person who fails to appear or otherwise properly
97 respond to a uniform boating citation shall, in addition to the
98 charge relating to the violation of the boating laws of this
99 state, be charged with the offense of failing to respond to such



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100 citation and, upon conviction, be guilty of a misdemeanor of the
101 second degree, punishable as provided in s. 775.082 or s.
102 775.083. A written warning to this effect shall be provided at
103 the time such uniform boating citation is issued.

104
105 ~~Any person cited for a violation of any such provision shall be~~
106 ~~deemed to be charged with a noncriminal infraction, shall be~~
107 ~~cited for such an infraction, and shall be cited to appear~~
108 ~~before the county court. The civil penalty for any such~~
109 ~~infraction is \$50, except as otherwise provided in this section.~~
110 ~~Any person who fails to appear or otherwise properly respond to~~
111 ~~a uniform boating citation shall, in addition to the charge~~
112 ~~relating to the violation of the boating laws of this state, be~~
113 ~~charged with the offense of failing to respond to such citation~~
114 ~~and, upon conviction, be guilty of a misdemeanor of the second~~
115 ~~degree, punishable as provided in s. 775.082 or s. 775.083. A~~
116 ~~written warning to this effect shall be provided at the time~~
117 ~~such uniform boating citation is issued.~~

118 (5) Any person electing to appear before the county court
119 or who is required so to appear shall be deemed to have waived
120 the limitations on the civil penalty specified in subsection
121 (1). The court, after a hearing, shall make a determination as
122 to whether an infraction has been committed. If the commission
123 of an infraction has been proven, the court may impose a civil
124 penalty not to exceed \$500 or a higher amount as specified in
125 subsection (1).

126 Section 3. For the purpose of incorporating the amendment
127 made by this act to section 327.73, Florida Statutes, in a
128 reference thereto, section 327.72, Florida Statutes, is



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129 reenacted and amended to read:

130 327.72 Penalties.—Any person failing to comply with the
131 provisions of this chapter or chapter 328 not specified in s.
132 327.73 or not paying the civil penalty specified in s. 327.73
133 ~~said section~~ within 30 days, except as otherwise provided in
134 this chapter or chapter 328, commits a misdemeanor of the second
135 degree, punishable as provided in s. 775.082 or s. 775.083.

136 Section 4. For the purpose of incorporating the amendment
137 made by this act to section 327.73, Florida Statutes, in a
138 reference thereto, subsection (1) of section 327.731, Florida
139 Statutes, is reenacted to read:

140 327.731 Mandatory education for violators.—

141 (1) Every person convicted of a criminal violation of this
142 chapter, every person convicted of a noncriminal infraction
143 under this chapter if the infraction resulted in a reportable
144 boating accident, and every person convicted of two noncriminal
145 infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p),
146 and (s)-(x), said infractions occurring within a 12-month
147 period, must:

148 (a) Enroll in, attend, and successfully complete, at his or
149 her own expense, a boating safety course that meets minimum
150 standards established by the commission by rule; however, the
151 commission may provide by rule pursuant to chapter 120 for
152 waivers of the attendance requirement for violators residing in
153 areas where classroom presentation of the course is not
154 available;

155 (b) File with the commission within 90 days proof of
156 successful completion of the course;

157 (c) Refrain from operating a vessel until he or she has



158 filed the proof of successful completion of the course with the
159 commission.

160
161 Any person who has successfully completed an approved boating
162 course shall be exempt from these provisions upon showing proof
163 to the commission as specified in paragraph (b).

164 Section 5. This act shall take effect October 1, 2011.

165
166 ===== T I T L E A M E N D M E N T =====

167 And the title is amended as follows:

168 Delete everything before the enacting clause
169 and insert:

170 A bill to be entitled
171 An act relating to vessels; amending s. 327.33, F.S.;
172 revising penalty provisions for the violation of
173 navigation rules; providing that a violation resulting
174 in serious bodily injury or death is a second-degree
175 misdemeanor; providing that a violation that does not
176 constitute reckless operation of a vessel is a
177 noncriminal violation; amending s. 327.73, F.S.;
178 providing for increased penalties for certain
179 noncriminal violations of navigation rules; deleting a
180 duplicate provision; reenacting and amending s.
181 327.72, F.S., relating to penalties, to incorporate
182 the amendment made to s. 327.73, in a reference
183 thereto; correcting a cross-reference; reenacting s.
184 327.731(1), F.S., relating to mandatory education for
185 violators, to incorporate the amendment made to s.
186 327.73, F.S., in a reference thereto; providing an



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187

effective date.

By Senator Negrón

28-00703-11

2011512__

1 A bill to be entitled
2 An act relating to vessels; amending s. 327.33, F.S.;
3 revising penalty provisions for violation of
4 navigation rules; providing that such violations that
5 do not constitute reckless operation of a vessel are
6 noncriminal violations; amending s. 327.73, F.S.;
7 providing for increased penalties for certain
8 noncriminal violations; deleting a duplicate
9 provision; amending s. 327.70, F.S.; conforming a
10 cross-reference to changes made by the act; reenacting
11 and amending s. 327.72, F.S., relating to penalties,
12 to incorporate changes made by the act in references
13 thereto; reenacting s. 327.731(1), F.S., relating to
14 mandatory education for violators, to incorporate
15 changes made by the act in references thereto;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsection (3) of section 327.33, Florida
21 Statutes, is amended to read:

22 327.33 Reckless or careless operation of vessel.—

23 (3) Each person operating a vessel upon the waters of this
24 state shall comply with the navigation rules.

25 ~~(a) A person whose violation of the navigation rules~~
26 ~~results in a boating accident, but whose violation did not~~
27 ~~constitute reckless operation of a vessel, is guilty of a~~
28 ~~misdemeanor of the second degree, punishable as provided in s.~~
29 ~~775.082 or s. 775.083.~~

28-00703-11

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30 (a)~~(b)~~ A person who violates ~~whose violation of~~ the
31 navigation rules and the violation ~~does not result in a boating~~
32 ~~accident and~~ does not constitute reckless operation of a vessel
33 commits ~~is guilty of~~ a noncriminal violation as defined in s.
34 775.08, punishable as provided in s. 327.73.

35 (b)~~(e)~~ Law enforcement vessels may deviate from the
36 navigational rules when such diversion is necessary to the
37 performance of their duties and when such deviation may be
38 safely accomplished.

39 Section 2. Subsections (1) and (5) of section 327.73,
40 Florida Statutes, are amended to read:

41 327.73 Noncriminal infractions.—

42 (1) Violations of the following provisions of the vessel
43 laws of this state are noncriminal infractions:

44 (a) Section 328.46, relating to operation of unregistered
45 and unnumbered vessels.

46 (b) Section 328.48(4), relating to display of number and
47 possession of registration certificate.

48 (c) Section 328.48(5), relating to display of decal.

49 (d) Section 328.52(2), relating to display of number.

50 (e) Section 328.54, relating to spacing of digits and
51 letters of identification number.

52 (f) Section 328.60, relating to military personnel and
53 registration of vessels.

54 (g) Section 328.72(13), relating to operation with an
55 expired registration.

56 (h) Section 327.33(2), relating to careless operation.

57 (i) Section 327.37, relating to water skiing, aquaplaning,
58 parasailing, and similar activities.

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59 (j) Section 327.44, relating to interference with
60 navigation.

61 (k) Violations relating to boating-restricted areas and
62 speed limits:

63 1. Established by the commission or by local governmental
64 authorities pursuant to s. 327.46.

65 2. Speed limits established pursuant to s. 379.2431(2).

66 (l) Section 327.48, relating to regattas and races.

67 (m) Section 327.50(1) and (2), relating to required safety
68 equipment, lights, and shapes.

69 (n) Section 327.65, relating to muffling devices.

70 (o) Section 327.33(3)~~(b)~~, relating to navigation rules, for
71 which the penalty is:

72 1. For a first offense, up to a maximum of \$500.

73 2. For a second offense, up to a maximum of \$750.

74 3. For a third or subsequent offense, up to a maximum of
75 \$1,000.

76 (p) Section 327.39(1), (2), (3), and (5), relating to
77 personal watercraft.

78 (q) Section 327.53(1), (2), and (3), relating to marine
79 sanitation.

80 (r) Section 327.53(4), (5), and (7), relating to marine
81 sanitation, for which the civil penalty is \$250.

82 (s) Section 327.395, relating to boater safety education.

83 (t) Section 327.52(3), relating to operation of overloaded
84 or overpowered vessels.

85 (u) Section 327.331, relating to divers-down flags, except
86 for violations meeting the requirements of s. 327.33.

87 (v) Section 327.391(1), relating to the requirement for an

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88 adequate muffler on an airboat.

89 (w) Section 327.391(3), relating to the display of a flag
90 on an airboat.

91 (x) Section 253.04(3)(a), relating to carelessly causing
92 seagrass scarring, for which the civil penalty upon conviction
93 is:

94 1. For a first offense, \$50.

95 2. For a second offense occurring within 12 months after a
96 prior conviction, \$250.

97 3. For a third offense occurring within 36 months after a
98 prior conviction, \$500.

99 4. For a fourth or subsequent offense occurring within 72
100 months after a prior conviction, \$1,000.

101
102 Any person cited for a violation of any such provision shall be
103 deemed to be charged with a noncriminal infraction, shall be
104 cited for such an infraction, and shall be cited to appear
105 before the county court. The civil penalty for any such
106 infraction is \$50, except as otherwise provided in this section.

107 Any person who fails to appear or otherwise properly respond to
108 a uniform boating citation shall, in addition to the charge
109 relating to the violation of the boating laws of this state, be
110 charged with the offense of failing to respond to such citation
111 and, upon conviction, be guilty of a misdemeanor of the second
112 degree, punishable as provided in s. 775.082 or s. 775.083. A
113 written warning to this effect shall be provided at the time
114 such uniform boating citation is issued.

115
116 ~~Any person cited for a violation of any such provision shall be~~

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117 ~~deemed to be charged with a noncriminal infraction, shall be~~
118 ~~cited for such an infraction, and shall be cited to appear~~
119 ~~before the county court. The civil penalty for any such~~
120 ~~infraction is \$50, except as otherwise provided in this section.~~
121 ~~Any person who fails to appear or otherwise properly respond to~~
122 ~~a uniform boating citation shall, in addition to the charge~~
123 ~~relating to the violation of the boating laws of this state, be~~
124 ~~charged with the offense of failing to respond to such citation~~
125 ~~and, upon conviction, be guilty of a misdemeanor of the second~~
126 ~~degree, punishable as provided in s. 775.082 or s. 775.083. A~~
127 ~~written warning to this effect shall be provided at the time~~
128 ~~such uniform boating citation is issued.~~

129 (5) Any person electing to appear before the county court
130 or who is required so to appear shall be deemed to have waived
131 the limitations on the civil penalty specified in subsection
132 (1). The court, after a hearing, shall make a determination as
133 to whether an infraction has been committed. If the commission
134 of an infraction has been proven, the court may impose a civil
135 penalty not to exceed \$500 or a higher amount specified in
136 subsection (1).

137 Section 3. Subsection (2) of section 327.70, Florida
138 Statutes, is amended to read:

139 327.70 Enforcement of this chapter and chapter 328.—

140 (2) (a) Noncriminal violations of the following statutes may
141 be enforced by a uniform boating citation mailed to the
142 registered owner of an unattended vessel anchored, aground, or
143 moored on the waters of this state:

144 1. Section 327.33(3) ~~(b)~~, relating to navigation rules.

145 2. Section 327.44, relating to interference with

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146 navigation.

147 3. Section 327.50(2), relating to required lights and
148 shapes.

149 4. Section 327.53, relating to marine sanitation.

150 5. Section 328.48(5), relating to display of decal.

151 6. Section 328.52(2), relating to display of number.

152 (b) Citations issued to livery vessels under this
153 subsection shall be the responsibility of the lessee of the
154 vessel if the livery has included a warning of this
155 responsibility as a part of the rental agreement and has
156 provided to the agency issuing the citation the name, address,
157 and date of birth of the lessee when requested by that agency.
158 The livery is not responsible for the payment of citations if
159 the livery provides the required warning and lessee information.

160 Section 4. For the purpose of incorporating the amendment
161 made by this act to section 327.73, Florida Statutes, in a
162 reference thereto, section 327.72, Florida Statutes, is
163 reenacted and amended to read:

164 327.72 Penalties.—Any person failing to comply with the
165 provisions of this chapter or chapter 328 not specified in s.
166 327.73 or not paying the civil penalty specified in s. 327.73
167 ~~said section~~ within 30 days, except as otherwise provided in
168 this chapter or chapter 328, commits a misdemeanor of the second
169 degree, punishable as provided in s. 775.082 or s. 775.083.

170 Section 5. For the purpose of incorporating the amendment
171 made by this act to section 327.73, Florida Statutes, in a
172 reference thereto, subsection (1) of section 327.731, Florida
173 Statutes, is reenacted to read:

174 327.731 Mandatory education for violators.—

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175 (1) Every person convicted of a criminal violation of this
176 chapter, every person convicted of a noncriminal infraction
177 under this chapter if the infraction resulted in a reportable
178 boating accident, and every person convicted of two noncriminal
179 infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p),
180 and (s)-(x), said infractions occurring within a 12-month
181 period, must:

182 (a) Enroll in, attend, and successfully complete, at his or
183 her own expense, a boating safety course that meets minimum
184 standards established by the commission by rule; however, the
185 commission may provide by rule pursuant to chapter 120 for
186 waivers of the attendance requirement for violators residing in
187 areas where classroom presentation of the course is not
188 available;

189 (b) File with the commission within 90 days proof of
190 successful completion of the course;

191 (c) Refrain from operating a vessel until he or she has
192 filed the proof of successful completion of the course with the
193 commission.

194

195 Any person who has successfully completed an approved boating
196 course shall be exempt from these provisions upon showing proof
197 to the commission as specified in paragraph (b).

198 Section 6. This act shall take effect October 1, 2011.

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 Environmental Preservation and Conservation Committee

BILL: SB 850

INTRODUCER: Senator Hays

SUBJECT: State Forests

DATE: March 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fleming</u>	<u>Carter</u>	<u>MS</u>	Favorable
2.	<u>Wiggins</u>	<u>Yeatman</u>	<u>EP</u>	Favorable
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the Division of Forestry (division) of the Department of Agriculture and Consumer Services (DACS) to designate “Wounded Warrior special hunt areas” on state forest lands and provide hunt areas for disabled veterans.

This bill substantially amends s. 589.19 of the Florida Statutes.

II. Present Situation:

The division within DACS manages and administers all state forests in the interests of the public.¹ The division is authorized to direct multiple-use management of forest lands owned by the state. Such use includes, but is not limited to, water-resource protection, forest-ecosystems protection, natural-resource-based low-impact recreation, and sustainable timber management for forest products.² Furthermore, the division cooperates with federal, state, and local government agencies, non-profit organizations, and other persons to apply for, solicit, and receive grants and funds from those agencies, organizations, firms and individuals.³

There are 35 state forests in Florida, totaling more than 1,052,000 acres.⁴ Under the direction of the Fish and Wildlife Conservation Commission, many state forests are open to regulated

¹ s. 589.21, F.S.

² s. 589.04(4), F.S.

³ s. 589.04(1)(B), F.S.

⁴ *State Forests in Florida*, DIVISION OF FORESTRY, http://www.fl-dof.com/state_forests/#history (last visited March 21, 2011).

hunting and fishing.⁵ Hunting requires a license and a permit and is allowed only in designated Wildlife Management Areas (WMAs) during specific seasons.⁶ Fishing also requires a valid license.⁷

A veteran is defined in s. 1.01, F.S., as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions.⁸ Peacetime service means Army, Navy, Marines, Coast Guard, or Air Force service that is not during a wartime era as defined in s. 1.01(14).⁹ Additionally, the veteran must have a service-connected disability as determined by the United States Department of Veterans Affairs or has been discharged or released from military service because of a disability incurred or aggravated in the line of duty. According to the FWC, the definition for mobility impaired includes the following:

- paraplegic,
- hemiplegic;
- quadriplegic;
- permanently dependent upon a wheelchair for ambulation;
- permanently required to use assisting aids to walk;
- permanently required to use braces or prostheses on both legs;
- single-leg above the knee amputation, and
- other injuries that the Office of Veterans Affairs has identified as mobility impaired.¹⁰

Non-profit organizations such as Wounded Warrior Outdoors, Inc.¹¹ and Wounded Warriors In Action¹² provide wounded servicemen and servicewomen with opportunities for outdoor recreational activities. In the past, such activities have included hunting and fishing excursions in various parts of the country. The organizations assert that such activities are therapeutic and an important part of physical and mental recovery. The funding required for specialized accommodations will be provided through the Friends of Florida State Forests Program (FFSF). The FFSF described in s.589.012, F.S., was established within DACS and its purpose is to provide support and assistance for existing and future programs of the division. These programs must be consistent with the division's mission statement. The purpose of the program is to:

- conduct programs and activities related to environmental education, fire prevention, recreation, and forest management,
- identify and pursue methods to provide resources and materials for these programs; and;

⁵ *State Forest Recreation*, DIVISION OF FORESTRY, http://www.fl-dof.com/forest_recreation/index.html (last visited March 21, 2011).

⁶ *Id.*

⁷ *Id.*

⁸ s. 1.01(14), F.S.

⁹ s. 296.02(7), F.S.

¹⁰ Florida Fish and Wildlife Conservation Commission Analysis, *Senate Bill 850* (March 4, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹¹ ABOUT WWO INC., <http://www.woundedwarrioroutdoors.com/about.html> (last visited March 21, 2011).

¹² ABOUT WWIA, <http://www.woundedwarriorsinaction.org/about.html> (last visited March 21, 2011).

- establish a statewide method to integrate these resources and materials.¹³

Currently, the division provides a hunting area in Lake Wales Ridge State Forest for a nearby “Wounded Warrior” organization. The hunts typically last for a weekend or several days and include special accommodations as needed by the wounded warriors, such as turkey blinds with space for operation of a motorized wheelchair.

III. Effect of Proposed Changes:

This bill amends s. 589.19, F.S., to require the division to designate “Wounded Warrior special hunt areas” on state forest lands to provide hunt areas for disabled veterans. The general statewide hunting regulations will apply to these special hunt areas. A person is eligible to hunt in a Wounded Warrior special hunt area if he or she is a veteran as defined in s. 1.01, F.S., or has eligible peacetime service, as defined in s. 296.02, F.S., and has a service-connected disability as determined by the United States Department of Veterans Affairs or has been discharged or released from military service because of a disability incurred or aggravated in the line of duty. In addition, persons required to assist the veteran because of his or her disability are authorized to use such areas.

This bill provides that the funding required for specialized accommodations shall be provided through FFSF created in s. 589.012, F.S. FFSF is a charitable not-for-profit corporation that supports programs within Florida's state forests and is governed by a board of directors representing all areas of the state.

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.

¹³ s. 589.012, F.S.

B. Private Sector Impact:

Friends of Florida State Forests would fund specialized accommodations needed in the Wounded Warrior special hunt areas.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Hays

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1 A bill to be entitled
2 An act relating to state forests; amending s. 589.19,
3 F.S.; providing for Wounded Warrior special hunt areas
4 for certain disabled veterans; providing for funding;
5 providing eligibility requirements; providing an
6 effective date.

7

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

9

10 Section 1. Section 589.19, Florida Statutes, is amended to
11 read:

12 589.19 Creation of certain state forests; naming of certain
13 state forests; Wounded Warrior special hunt areas.—

14 (1) When the Board of Trustees of the Internal Improvement
15 Trust Fund, any state agency, or any agency created by state
16 law, authorized to accept reforestation lands in the name of the
17 state, approves the recommendations of the Division of Forestry
18 in reference to the acquisition of land and acquire such land,
19 the said board, state agency, or agency created by state law,
20 may formally designate and dedicate any area as a reforestation
21 project, or state forest, and where so designated and dedicated
22 such area shall be under the administration of the division
23 which shall be authorized to manage and administer said area
24 according to the purpose for which it was designated and
25 dedicated.

26 (2) The first state forest acquired by the Board of
27 Trustees of the Internal Improvement Trust Fund in Baker County
28 is to be named the John M. Bethea State Forest. This is to honor
29 Mr. John M. Bethea who was Florida's fourth state forester and

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30 whose distinguished career in state government spanned 46 years
31 and who is a native of Baker County.

32 (3) The state forest managed by the Division of Forestry in
33 Seminole County is to be named the Charles H. Bronson State
34 Forest to honor Charles H. Bronson, the tenth Commissioner of
35 Agriculture, for his distinguished contribution to this state's
36 agriculture and natural resources.

37 (4) (a) The Division of Forestry shall designate "Wounded
38 Warrior special hunt areas" on state forest lands to provide
39 hunt areas for disabled veterans. Funding required for
40 specialized accommodations shall be provided through the Friends
41 of Florida State Forests Program created in s. 589.012. The use
42 of such areas shall be limited to a veteran who is eligible
43 pursuant to paragraph (b) and other persons required to assist
44 the veteran because of his or her disability.

45 (b) A person is eligible to hunt in a Wounded Warrior
46 special hunt area if he or she is a veteran, as defined in s.
47 1.01, or has eligible peacetime service, as defined in s.
48 296.02, and:

49 1. Has a service-connected disability as determined by the
50 United States Department of Veterans Affairs; or

51 2. Has been discharged or released from military service
52 because of a disability incurred or aggravated in the line of
53 duty.

54 Section 2. This act shall take effect July 1, 2011.

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 Agriculture Committee

BILL: CS/CS/SB 1174

INTRODUCER: Environmental Preservation and Conservation Committee, Agriculture Committee and Senators Siplin and Lynn

SUBJECT: Agricultural-related Exemptions to Water Management Requirements

DATE: March 31, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Spalla</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute for Committee Substitute (CS) provides that the exemption allowing the topography of land to be altered for agricultural activities without an environmental resource permit (ERP) will not be superseded by language in the Warren S. Henderson Wetlands Protection Act¹ (Wetlands Protection Act) so long as the alteration is not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. It specifies certain lands and certain activities that do not qualify for this exemption.

The CS provides that the Department of Agriculture and Consumer Services (DACS) has exclusive authority to make a binding determination as to whether an activity qualifies for an agricultural-related exemption upon request from a water management district (WMD) or a landowner. The CS gives DACS necessary rulemaking authority and requires the DACS and each WMD to enter into or amend existing memoranda of agreement to implement a binding determination process.

¹ Chapter 84-79, Laws of Florida.

The CS establishes circumstances under which land converted from agricultural uses will not be subject to mitigation and it redefines the definition of agricultural activities contained in the Wetlands Protection Act.

This CS substantially amends sections 373.406, 373.407, and 403.927 of the Florida Statutes.

II. Present Situation:

Agricultural Activities and State Surface Water and Wetland Permitting

Part IV, ch. 373, F.S., addresses the management and storage of surface waters in Florida. Persons engaged in certain agricultural occupations are currently exempted from having to obtain an environmental resource permit from a WMD when altering the topography of land unless such alteration is being done for the sole or predominant purpose of impounding or obstructing surface waters.² The Wetlands Protection Act³ established a permitting process for dredge and fill permits to protect and manage wetlands and it provides that agricultural activities are not subject to specific discharge permits except that the Department of Environmental Protection (DEP) may require a stormwater permit or discharge permit at the point of discharge from an agricultural water management system.

In 2009, two appellate court decisions were entered regarding a challenge by a large agricultural entity to certain rules of a WMD and its statutory interpretation of s. 373.406(2), F.S. The entity was charged with constructing numerous drainage ditches without obtaining a permit and appealed the Administrative Law Judge's (ALJ) recommended order⁴ which was adopted by the WMD. *Duda I* addressed only the rule challenge and found in favor of the WMD. While the enforcement issue was not addressed, *Duda I* recognized that the exemption providing for the alteration of the topography of land for agriculture purposes was limited by the further statutory provision that the alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters. The WMD interpreted that to mean "that there is no exemption if the alteration of topography has the effect of more than incidentally trapping, obstructing or diverting surface waters."⁵ After a lengthy analysis, the *Duda I* court made a finding that such interpretation rendered the agricultural exemption in s. 373.406(2), F.S., virtually meaningless and that the ALJ had erred in accepting the WMD's erroneous interpretation⁶ and remanded that part of the appeal for further review by the ALJ. In *Duda II*, a panel made up of different judges from the same court found that the WMD had shown sufficient evidence that wetlands had been impacted and agreed that the company had to either restore the impacted wetlands or apply for after-the-fact permits. While this was the result of the court's second opinion, the court also said that the opinion in *Duda I* did not address the interplay between s. 373.406(2), F.S., and the language in the Wetlands Protection Act and reiterated the prior panel's finding that those provisions, read together, virtually eliminate the agricultural exemption as it applies to alterations

² Section 373.406(2), F.S.

³ Section 403.927, F.S., the remaining section of the Warren S. Henderson Wetlands Protection Act that has not been repealed.

⁴A. *Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) (*Duda I*) and 22 So. 3d 622 (Fla. 5th DCA 2009) (*Duda II*).

⁵A. *Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) at 741.

⁶ *Id.* at 744.

impacting wetlands. Various persons, entities, and organizations involved in agricultural industries and occupations have expressed concerns about the practical usefulness of the agricultural exemption in s. 373.406(2), F.S., because of the conflict between the WMD's interpretation and the findings in *Duda I* and *Duda II*.

Pursuant to s. 373.407, F.S., DACS and each of the five WMD's entered into memoranda of agreement (MOA) in 2007 which sets forth a procedure for DACS to make a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). DACS reports that this involves a site visit, review of technical support materials and issuance of a written non-binding determination. DACS further states that only one or two requests per year are received from the WMDs and would expect that number to increase when landowners can also make a request for a binding determination.

Currently, if land served by a water management system is converted to a use other than agricultural use, that land will no longer be entitled to agricultural-related exemptions. And the definition of "Agricultural activities" contained in the Wetlands Protection Act does not include the activities of cultivating, fallowing, or leveling nor does the predominant purpose of the activity matter if the result is that it impedes or diverts the flow of surface water.

Federal Permitting for Surface Water and Wetlands in Florida

For activities occurring in "waters of the United States" in Florida, including wetlands, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the Clean Water Act (CWA).⁷ Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,⁸ although the focus of this legislation is primarily maintaining navigable waters.⁹ When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP permit or the WMD permit and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the ERP program under section 401 of the CWA. The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities.

III. Effect of Proposed Changes:

Section 1 amends s. 373.406, F.S., to specify that, notwithstanding the provisions of s. 403.927, F.S., the Wetlands Protection Act, persons engaged in agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, so long as that is not the sole or predominate purpose of the activity or alteration of the topography. The CS provides that the exemption applies only to lands classified as agricultural pursuant to s. 193.461, F.S., and to activities requiring an ERP pursuant to part IV, ch. 373, F.S. The exemption shall specifically not apply to activities previously permitted under part IV, ch. 373, F.S., or permitted under ch. 403, F.S.

⁷ 33 U.S.C. ss. 1251-1387.

⁸ 33 U.S.C. s. 403.

⁹ Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (2005).

Section 2 amends s. 373.407, F.S., to provide that a WMD or a landowner may request the DACS to make a binding determination in the event of a dispute about whether an existing or proposed activity qualifies for an agricultural-related exemption under s. 373.406(2), F.S. The CS requires the DACS and each WMD to enter into or amend existing MOAs to set forth how it will make its review and issue a binding determination. The CS further states that the DACS has exclusive authority to make this binding determination and may adopt rules to implement this procedure.

Section 3 amends s. 403.927, F.S., to provide that when land is converted to a purpose other than an agricultural use, mitigation under chs. 373 or 403, F.S., is not required to offset any adverse effects caused by agricultural activities if such activities occurred in the four years preceding the conversion. It also redefines “agricultural activities” to add “cultivating,” “fallowing” and “leveling” to the existing list of activities and it specifies that activities do not qualify as “agricultural activities” if they are for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Section 4 provides that the act shall take effect July 1, 2011.

Other Potential Implications:

Exemptions for altering (impeding, diverting or adversely affecting) wetlands and surface waters without a permit for agricultural activities may expose both private landowners and state agencies to liability. There are several legal theories available to a lower (servient) parcel’s landowner if changes to the surface water or wetlands of an upper parcel increase flow, intensity of flow or generally alter natural drainage patterns. Common law nuisance and trespass, and negligence causes of action are well established in case law and can and do apply to surface water flooding and alteration to wetlands.¹⁰ Courts have consistently held that both private and public landowners may be liable for damages for filling or draining wetlands that result in flooding or other impacts to other properties.¹¹

¹⁰ Jon Kusler, *Common Legal Questions: Landowner Liability for Draining or Filling Wetlands*, Assoc. of State Wetland Managers, Inc., http://www.aswm.org/propub/4_liability_6_26_06.pdf (last visited Mar 27, 2011). No landowner has a right to use his or her land in a manner that substantially interferes, in a physical sense, with the use of adjacent lands. See, e.g., *Sandifer Motor, Inc. v. City of Rodland Park*, 628 P.2d 239 (Kan. 1981). Landowners can also bring trespass actions for activities that result in a physical invasion of private property such as flooding or drainage. See *Hadfield v. Oakleim County Drain Com’r*, 422 N.W.2d 205 (Mich., 1998).

¹¹ *Id.* at 3. See *Hendrickson v. Wagners, Inc.*, 598 N.W.2d 507 (S.D., 1999) (Court granted an injunction to require landowner who altered wetlands with resultant flooding to lower estate to fill drainage ditches); *Boren v. City of Olympia*, 112 Wash. App. 359, 53 P.3d 1020 (Wash. 2002) (City was potentially negligent for increasing discharge of water to a wetland which damaged landowner); *Snohomish County v. Postema*, 978 P.2d 1101 (Wash. 1998) (Lower landowner had potential trespass action against upper landowner who cleared and drained wetland); *Lang et al v. Wonnemberg et al*, 455 N.W.2d 832 (N.D. 1990) (Court upheld award of damages against landowner who drained wetlands which resulted in periodic flooding of neighboring properties.). In some cases, the permitting agency may also be liable. See *Hurst v. United States*, 739 F. Supp. 1377 (D.S.D 1990) (Court held the U.S. Army Corps of Engineers liable for negligently supervising the project and for failing to issue a prohibitory order which resulted in flood and erosion damage.).

The WMDs have expressed concerns with various provisions of the CS:

- The CS expands the original intent of the agricultural exemption contained in the Wetlands Protection Act. The original act did not allow for “leveling” as a defined agricultural activity, which will allow agricultural operations to fill depressional wetlands. While “cultivating” and “fallowing” were also added, they are not seen as significant expansions.
- The CS specifies that the DACS is the sole regulator of wetlands on agricultural lands and must issue binding determinations. Currently, the DACS assists the WMDs in making a determination, but ultimately, the determination is made by a WMD. The concern is whether the department has the necessary expertise or staff to carry out this requirement.
- The exemption allows for activities that impede or divert surface waters or adversely impact wetlands. Wetlands are regulated by both state (the DEP and WMDs) and federal agencies (the EPA and the Corps). It is unknown what impact the provisions of this CS will have on federal delegation to the state of certain wetland permitting functions.
- The provision for negating the mitigation of adverse effects occurring before the conversion of the land from agriculture to another use appears to provide a “loophole” for flipping land from agricultural to development within four years without obtaining permits.

Further, allowing agricultural activities to alter wetlands and surface waters without a permit may create additional litigation. Third parties may challenge a ruling that the alterations are for the sole or predominate purpose of impeding or diverting surface waters or adversely impacting wetlands. The current rule does not allow the exemption if it impacts surface waters or wetlands – an objective standard. The CS sets up the determination as a subjective standard, which can lead to confusion if litigation does arise.

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:

There are potential savings of time and expense for agricultural operations that may be exempt from obtaining ERPs to alter topography. There also may be increased litigation

costs for agricultural operations and third parties who challenge the exemptions and binding determinations. Additionally, agricultural land converted to other uses but having been in agricultural activities for the previous four years prior to conversion are not subject to mitigation requirements for those alterations.

C. Government Sector Impact:

The DACS estimates two new positions, at a minimum, would be needed to handle the additional workload arising from requests for determination as set forth below:

	FY 10-11	FY 11-12	FY 12-13
	Amount/FTE	Amount/FTE	Amount/FTE
Revenues:			
Recurring	\$175,000/2	\$175,000/2	\$175,000/2
Non-Recurring	-0-	-0-	-0-

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Mar 30, 2011

The CS narrows the agricultural-related exemption to those activities requiring an ERP pursuant to Part IV, ch. 373, F.S., rather than all activities regulated pursuant to this part. It also does not require mitigation to offset any adverse effects caused by agricultural activities if such activities occurred in the four years preceding the conversion.

CS by Agriculture on March 21, 2011:

The CS removed language making the agricultural-related exemption retroactive to July 1, 1984¹² and replaced it with provisions that limit the exemption to lands classified as agricultural pursuant to s. 193.461, F.S., and to activities regulated pursuant to part IV, ch. 373, F.S. It also added language that specifically states that the exemption shall not apply to activities previously permitted under part IV, ch. 373, or ch. 403, F.S.

B. Amendments:

None.

¹² The effective date of the Warren S. Henderson Wetlands Protection Act.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



820452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Rich) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 42
and insert:
This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any

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

And the title is amended as follows:

Delete line 7



13 and insert:
14 applies to certain agricultural lands and certain
15 activities requiring an environmental resource permit
16 and does not



612756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment

Delete lines 86 - 87
and insert:
the activities occurred on the land in the last 4 years
preceding the conversion.

By the Committee on Agriculture; and Senators Siplin and Lynn

575-02800-11

20111174c1

1 A bill to be entitled

2 An act relating to agricultural-related exemptions to
3 water management requirements; amending s. 373.406,
4 F.S.; revising an exemption for agricultural-related
5 activities to include certain impacts to surface
6 waters and wetlands; providing that the exemption
7 applies to certain agricultural lands and does not
8 apply to specified permitted activities; amending s.
9 373.407, F.S.; providing exclusive authority to the
10 Department of Agriculture and Consumer Services to
11 determine whether certain activities qualify for an
12 agricultural-related exemption under specified
13 conditions; requiring a specified memorandum of
14 agreement between the department and each water
15 management district; authorizing the department to
16 adopt rules; amending s. 403.927, F.S.; providing an
17 exemption from mitigation requirements for converted
18 agricultural lands under certain conditions; revising
19 the definition of the term "agricultural activities"
20 to include cultivating, fallowing, and leveling and to
21 provide for certain impacts to surface waters and
22 wetlands; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (2) of section 373.406, Florida
27 Statutes, is amended to read:

28 373.406 Exemptions.—The following exemptions shall apply:
29 (2) Notwithstanding s. 403.927, nothing herein, or in any

575-02800-11

20111174c1

30 rule, regulation, or order adopted pursuant hereto, shall be
31 construed to affect the right of any person engaged in the
32 occupation of agriculture, silviculture, floriculture, or
33 horticulture to alter the topography of any tract of land,
34 including, but not limited to, activities that may impede or
35 divert the flow of surface waters or adversely impact wetlands,
36 for purposes consistent with the practice of such occupation.
37 However, such alteration or activity may not be for the sole or
38 predominant purpose of impeding ~~impounding~~ or diverting the flow
39 of ~~obstructing~~ surface waters or adversely impacting wetlands.
40 This exemption is applicable only on lands classified as
41 agricultural pursuant to s. 193.461 and to activities regulated
42 pursuant to this part. This exemption does not apply to any
43 activities previously authorized by an environmental resource
44 permit, a permit for the management and storage of surface
45 waters issued pursuant to this part, or a dredge and fill permit
46 issued pursuant to chapter 403.

47 Section 2. Section 373.407, Florida Statutes, is amended to
48 read:

49 373.407 Determination of qualification ~~Memorandum of~~
50 ~~agreement~~ for an agricultural-related exemption. In the event of
51 a dispute as to the applicability of an exemption, No later than
52 July 1, 2007, the Department of Agriculture and Consumer
53 Services and each water management district shall enter into a
54 memorandum of agreement under which the Department of
55 Agriculture and Consumer Services shall assist in a
56 determination by a water management district or landowner may as
57 to whether an existing or proposed activity qualifies for the
58 exemption in s. 373.406(2). The memorandum of agreement shall

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20111174c1

59 ~~provide a process by which, upon the request of a water~~
60 ~~management district,~~ the Department of Agriculture and Consumer
61 Services to make a binding determination shall conduct a
62 ~~nonbinding review~~ as to whether an existing or proposed activity
63 qualifies for an agricultural-related exemption under ~~in~~ s.
64 373.406(2). The Department of Agriculture and Consumer Services
65 and each water management district shall enter into a memorandum
66 of agreement or amend an existing memorandum of agreement which
67 sets forth ~~shall provide~~ processes and procedures by which the
68 Department of Agriculture and Consumer Services shall undertake
69 its ~~this~~ review, make a determination effectively and
70 efficiently, and provide notice of its determination to the
71 applicable water management district or landowner. The
72 Department of Agriculture and Consumer Services has exclusive
73 authority to make the determination under this section and may
74 adopt rules to implement this section and s. 373.406(2) ~~issue a~~
75 ~~recommendation.~~

76 Section 3. Subsection (3) and paragraph (a) of subsection
77 (4) of section 403.927, Florida Statutes, are amended to read:

78 403.927 Use of water in farming and forestry activities.—

79 (3) If land served by a water management system is
80 converted to a use other than an agricultural use, the water
81 management system, or the portion of the system which serves
82 that land, will be subject to the provisions of this chapter.
83 However, mitigation under chapter 373 or this chapter to offset
84 any adverse effects caused by agricultural activities that
85 occurred before the conversion of the land is not required if
86 the activities occurred on the land in at least 4 of the last 7
87 years preceding the conversion.

575-02800-11

20111174c1

88 (4) As used in this section, the term:

89 (a) "Agricultural activities" includes all necessary
90 farming and forestry operations which are normal and customary
91 for the area, such as site preparation, clearing, fencing,
92 contouring to prevent soil erosion, soil preparation, plowing,
93 planting, cultivating, harvesting, fallowing, leveling,
94 construction of access roads, and placement of bridges and
95 culverts, provided such operations are not for the sole or
96 predominant purpose of impeding ~~do not impede~~ or diverting
97 ~~divert~~ the flow of surface waters or adversely impacting
98 wetlands.

99 Section 4. This act shall take effect July 1, 2011.

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 Environmental Preservation and Conservation Committee

BILL: PCS/SB 1404 (975266)

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Environmental Permitting

DATE: April 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Pre-meeting
2.			CA	
3.			AG	
4.			BC	
5.				
6.				

I. Summary:

The proposed committee substitute (PCS) creates, amends and redefines provisions relating to environmental permitting. It addresses development, construction, operating and building permits; permit application requirements and procedures, including waivers, variances, revocation and challenges; state programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, aggregate mitigation fees and solid mineral mining activities. Specifically the PCS:

- Provides that the burden of persuasion and evidence falls on third party, non-applicants who wish to challenge an agency’s decision for those challenges arising under chs. 373, 378 or 403, F.S;
- Prohibits a local government or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allows applicants 90 days to respond to requests for additional information (RAI);
- Prohibits a county from requiring an applicant to obtain state and federal permits as a condition of approval for development permits;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;
- Clarifies beach and shore restoration requirements;
- Specifies additional uses and activities in the Biscayne Bay Aquatic Preserve;
- Expands the use of Internet-based self-certification services for exemptions and general permits;

- Requires the Florida Department of Transportation to use private mitigation banks, if available, to mitigate its environmental impacts;
- Clarifies how the Department of Environmental Protection issues RAIs;
- Provides for an expanded state programmatic general permit;
- Shifts the proceeds of the Lake Belt water treatment upgrade fee to the South Florida Water Management District from Miami-Dade County for a limited time;
- Requires certain counties and municipalities with specified populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;
- Expands the statutory exemptions for certain solid mineral mines;
- Revises the definition for “financially disadvantaged small community”;
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Provides for incentive-based environmental permitting;
- Revises the definition of industrial sludge;
- Revises provisions related to solid waste disposal and management;
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action;
- Provides expedited permitting for inland multimodal facilities;
- Clarifies creation of regional action teams for expedited permitting for certain businesses;
- Establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects;
- Allows for sale of unblended fuels for specified applications;
- Extends certain deadlines for petroleum storage tank upgrades;
- Clarifies statutory requirements related to the Uniform Mitigation and Assessment Method; and
- Adds an exemption for certain entities to the reduced or waived permit fee provisions.

This PCS substantially amends ss. 120.569, 125.022, 161.041, 163.3180, 166.033, 218.075, 258.397, 373.026, 373.413, 373.4136, 373.4137, 373.414, 373.4141, 373.4144, 373.41492, 373.441, 376.30715, 380.06, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.707, 403.814, 403.973, 526.203, Florida Statutes.

This PCS creates ss. 161.032 and 403.0874, Florida Statutes, and an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas proposed to be amended by this PCS are diverse. They include administrative hearing challenge requirements and burdens, shortened timelines to review applications, biofuels manufacturing, limiting redundant federal, state and local permitting authority, agency requests for additional information (RAIs), burdens and requirements on challenging parties, Internet-based self-certification, state programmatic general permitting, delegation of permitting authority, incentive-based permitting, general permits for surface water management systems, solid mineral mining, expedited permitting for economic

development projects and mitigation. Each programmatic area will be addressed in the “effect of proposed changes” of the PCS to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 120.569, F.S., relating to challenges under the Administrative Procedures Act.¹

Chapter 120, F.S., is called the Administrative Procedures Act (APA). It regulates how executive branch agencies adopt rules used to implement and administer their powers and duties. Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency. Under current law, when a third party challenges an agency action, the applicant has the ultimate burden of persuasion and evidence in a de novo administrative proceeding.²

The PCS establishes the procedures for any hearing arising under chapters 373,³ 378,⁴ or 403,⁵ F.S. If a third party, non-applicant challenges an agency’s issuance of a license, permit or conceptual approval, the applicant may go first to present a prima facie case demonstrating a right to the license, permit or conceptual approval, followed by the issuing agency. The third party then has the burden of ultimate persuasion and the burden of going forward to prove the case. The applicant and the agency may present rebuttal evidence to demonstrate the application meets the conditions for issuance. This change focuses the challenge to specific issues, rather than making the applicant defend the entire application, as is currently the case. It also shifts the burden of persuasion to the third party challenger instead of the applicant.

Section 2 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant’s first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The PCS prohibits a county from making processing of a development permit conditional on the applicant securing permits from any other state or federal agency, unless the agency issues a notice of intent to deny the permit before the county’s action. It specifies that issuance of a county development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for the applicant’s failure to fulfill its

¹ Section 120.51, F.S.

² See *Fla. Dep’t of Transportation v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

³ Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.

⁴ Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.

⁵ Chapter 403, F.S., establishes that the state’s public policy includes protecting water and air quality and supply for public health and safety and the environment.

legal obligations. The PCS allows a county to require that an applicant obtain all state and federal permits before commencing development.

Section 3 creates s. 161.032, F.S., relating to application review and RAIs.

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered “complete” until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a “take” as, “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues permits for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.⁶

The PCS specifies how the Department of Environmental Protection (DEP) processes applications and issues RAIs. The PCS requires the DEP to issue any RAIs within 30 days of receiving an application. It limits the types of information that can be included in a RAI. Once the RAI is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the RAI is not authorized by law or rule, he or she may request the DEP to process the application. Additionally, the PCS allows the applicant 90 days to respond to a RAI and for one 90-day extension for applicants who notify the DEP. Further extensions may be granted for good cause. Failure of the applicant to sufficiently answer an RAI results in denial of the permit without prejudice.

The PCS authorizes the DEP to issue a permit in advance of an applicant securing an incidental take permit from the U.S. Fish and Wildlife Service if the permit contains conditions that prohibit the authorized activity from occurring until the incidental take permit is approved.

Section 4 amends s. 161.041, relating to permits required for beach and shore preservation.

Beach restoration and nourishment projects are permitted by the DEP pursuant to Rule 62B-41.008(1)(k)4.b., Florida Administrative Code (F.A.C.). Permit applications must include a quality control/assurance plan to ensure the sediment from the sand borrow area will meet the

⁶ U.S. Fish and Wildlife Service, *Endangered Species Permits*, <http://www.fws.gov/midwest/endangered/permits/hcp/index.html> (last visited Apr. 8, 2011).

standards contained in Rule 62B-41-007(2)(j), F.A.C.⁷ Some coastal counties conducting or planning beach nourishment projects have expressed concerns over the DEP's inconsistent rule interpretation on the percentage of silt, clay or colloids allowed in beach fill. The rule provides that silt, clay or colloids cannot make up more than five percent by weight of the borrowed sand.

Proviso language in the Fiscal Year 2008-2009 General Appropriations Act called for creation of a working group to evaluate the effectiveness of Florida's beach management program. The working group included the Secretary of Environmental Protection along with city and county representatives, experts, engineers and environmental stakeholders. The working group was tasked with coming up with recommendations to address funding challenges, increasing regulatory costs and the need for better program accountability.⁸ One of the recommendations was to amend chapter 161, F.S., to include Legislative intent to simplify the permitting of maintenance nourishment projects previously permitted by the DEP under the Joint Coastal Permit process.⁹

The PCS provides that the incentive-based program created in new s. 403.0874, F.S., of this PCS, applies to all permits issued under chapter 161, F.S. It also prohibits the DEP from requiring higher standards than those contained in existing rules or statutes for sediment quality specifications or turbidity standards for beach restoration projects. Additionally, it prohibits the DEP from issuing guidelines that are enforced as standards without conducting rulemaking. The PCS directs the DEP to amend rules to streamline the permitting process for periodic beach maintenance projects when renourishment of the beach at issue has been previously permitted.

Section 5 amends s. 163.3180, F.S., relating to concurrency.

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system and measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.¹⁰

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), F.A.C., allows local governments to evaluate transportation

⁷ Florida Dep't of Environmental Protection, *Guidelines for Preparing Sediment Quality Control / Quality Assurance Plans for Submittal to the Florida Department of Environmental Protection*, available at <http://www.dep.state.fl.us/beaches/publications/pdf/QCQAPlan9-09.pdf> (last visited Apr. 8, 2011).

⁸ Beach Management Working Group, *Recommendations of the Beach Management Working Group* (on file with the Senate Committee on Environmental Preservation and Conservation).

⁹ *Id.* at 7.

¹⁰ Florida Dep't of Community Affairs, *Division of Community Planning*, <http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm> (last visited Mar. 27, 2011).

concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.¹¹

The Florida Department of Transportation (DOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or “*de minimis*” are exempted from concurrency, where certain criteria are met. There are two alternatives:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on “assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.”¹² To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

The PCS provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and

¹¹ *Id.*

¹² Section 163.31801(15)(a), F.S.

associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is proximate to regionally significant road and rail transportation facilities; and
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 6 amends s. 166.033, F.S., relating to municipal development permits.

This section of the PCS is substantially similar to section two of the PCS, except it addresses municipalities instead of counties. The PCS prohibits a municipality from making processing of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations. The PCS allows a municipality to require that an applicant obtain all state and federal permits before commencing development.

Section 7 amends s. 258.397, F.S., relating to the Biscayne Bay Aquatic Preserve.

Florida has 41 aquatic preserves, encompassing approximately 2 million acres. Biscayne Bay Aquatic preserve is located in Southeast Florida in Miami-Dade and Monroe Counties. Its boundaries, management authorities, and rules are established in Rule 18-18, F.A.C.¹³ The Board of Trustees of the Internal Improvement Trust Fund (Board) may not convey sovereignty submerged lands within the preserve except upon a showing of extreme hardship by the applicant and that the conveyance is in the public interest. There are no exceptions for municipal projects. In addition, dredging and filling activities are restricted to four activities:

- For public navigation, public necessity or preservation of the bay;
- For enhancement of the quality and utility of the preserve;
- For creation and maintenance of marinas, piers and docks and their associated activities as long as the Board makes a specific finding that the dredge and fill activities will not adversely affect the quality and utility of the preserve; and
- For the purpose of eliminating public health hazards, stagnant waters, islands and spoil banks, if the dredging will enhance the aesthetic and environmental quality and utility of the preserve.

The PCS exempts a municipal applicant from having to show extreme hardship for a proposed project, although the Board must still find the project is in the public interest. The PCS also

¹³ Florida Dep't of Environmental Protection, *About the Biscayne Bay Aquatic Preserve*, <http://www.dep.state.fl.us/coastal/sites/biscayne/info.htm> (last visited Apr. 9, 2011).

expands specified dredge and fill activities to allow for creation of public waterfront promenades.

Section 8 amends s. 373.026, F.S., relating to DEP powers and duties and self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing “applicants” to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, “applicants” do not apply for permits in the traditional sense. They simply undertake the regulated activity and “self-certify” that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing, repairing, and adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.¹⁴

In addition, the water management districts (WMD) allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,¹⁵ interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP’s website. Some local governments require a “signature” from DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact that current law neither requires nor provides for a “signature” from the DEP as an alternative or as supplemental to self-certification.

The PCS requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits, if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 9 amends s. 373.413, F.S., relating to permits for construction or alteration that affect management and storage of surface waters.

The PCS requires that the “Florida Incentive-based Permitting Act,” created in this PCS, applies to permits for construction or alteration of water management systems issued under this section of the Florida Statutes.

¹⁴ Florida Dep’t of Environmental Protection, *FDEP’s Self-Certification Process for Single-Family Docks*, <http://appprod.dep.state.fl.us/erppa/> (last visited Mar. 26, 2011).

¹⁵ Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf> (last visited Mar. 26, 2011).

Section 10 amends s. 373.4137, F.S., relating to the mitigation requirement for specified transportation projects.

Enacted in 1996, s. 373.4137, F.S., directs the DOT to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The DOT creates escrow accounts with the DEP or a WMD for its mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., are also able to create escrow accounts with the WMDs and the DEP for their mitigation requirements.

On a annual basis, the DOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over or under transfer of funds.

The PCS provides Legislative intent that mitigation credits for transportation projects must be purchased from private mitigation banks, or if not available, through any other mitigation options that satisfy state and federal requirements. The requirement that private mitigation banks be used first also applies to mitigation plans submitted pursuant to s. 373.4137(4), F.S. In determining the activities to include in the plans, the WMDs are required to purchase mitigation credits from a private or public mitigation bank. Consideration of other mitigation options shall not be included in the plan even if they are more cost-effective. The PCS makes it optional for transportation authorities to participate in the program. It provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD will have continuing responsibility for the mitigation project. Lastly, it allows the DOT, a transportation authority or a WMD to unilaterally exclude specific projects from the mitigation plan.

Section 11 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request that the agency process the application if he or she believes that an RAI is not authorized by law or rule. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, or limitation to the number of times the agency may request additional information.

The PCS prohibits the DEP or a WMD from requesting more than two RAIs unless the applicant waives this limitation in writing. If the applicant does not respond to a RAI within 90 days, or a different time frame if agreed upon with the DEP or a WMD, the application is considered withdrawn. The PCS also shortens the time frame that permits must be notice for a proposed agency action from 90 days to 60. Additionally, the PCS prohibits an agency from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 12 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.¹⁶

For activities occurring in "waters of the United States" in Florida, including wetlands, the Federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).¹⁷ Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,¹⁸ although the focus of that legislation is primarily maintaining navigable waters.¹⁹ When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the state Environmental Resource Permit (ERP)²⁰ program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.²¹

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

¹⁶ Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at <http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf> (last visited Mar. 28, 2011).

¹⁷ 33 U.S.C. §§ 1251-1387.

¹⁸ 33 U.S.C. § 403.

¹⁹ Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Mar. 28, 2011).

²⁰ See generally ch. 373, Part IV, F.S.

²¹ Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at <http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf> (last visited Mar. 28, 2011).

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorization for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.²² The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The PCS requires the DEP to obtain an expanded SPGP or a series of regional general permits from the Corps for activities in waters similar in nature that will only cause minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Where appropriate, the SPGP program should be used to eliminate the need for a separate individual approval from the Corps.

The PCS directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The PCS authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the SPGP is at least as protective as existing state and federal laws. The PCS would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

The PCS also removes obsolete language requiring the DEP to report to the Legislature on how to consolidate federal and state wetland permitting functions.

Section 13 amends s. 373.41492, F.S., relating to mitigation for mining activities within the Miami-Dade County Lake Belt.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning; these issues include the quality of the rock; thickness of overburden; water table levels, and sinkhole conditions. The most economically advantageous deposits of aggregate materials are located in 79 square miles in Northwest Miami-Dade County known as the Lake Belt. The Lake Belt is distinct in that it has been identified as the highest concentration of the highest quality aggregate indigenous to Florida. Nearly all aggregates mined in Florida are used instate.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. The Lake Belt Plan protects the Everglades from encroaching development while maintaining the numerous economic benefits of the state's limestone industry. Under the plan, the Lake Belt

²² *Id.* at 20.

limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the Corps.

In 2008 Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately \$350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately \$16.2 million in rock mining fees. About \$9.8 million has been spent on planning and design, and about \$6.4 million remains, of which \$3 million is committed to the current design contract.

The PCS adds seepage mitigation projects, as authorized in an ERP, to the various activities that can be funded by the Miami-Dade County Lake Belt water treatment plant upgrade fee. Those projects may include hydrological structures. It defines "proceeds of the fee" to mean all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees; and provides that the amount deducted for administrative costs may not exceed three percent of the total revenues collected and may equal only those costs attributable to the fees.

The PCS provides that beginning January 1, 2012, and ending either December 31, 2017 or upon issuance of Water Quality Certification for Phase II mining activities, whichever occurs sooner, proceeds from the water treatment plant upgrade fee, less administrative costs, must be redirected to South Florida WMD and deposited into the Lake Belt Mitigation Trust Fund. Also, beginning January 1, 2018 this same fee is to be returned to Miami-Dade County for activities authorized under this section.

The PCS provides that the proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund must only be used to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an ERP issued by DEP for mining activities within the Miami-Dade County Lake Belt Area.

Section 14 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and rules authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments.²³ Local governments are entitled to request delegation authority from the DEP for a variety of programs and the DEP has authority to approve those delegations. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is

²³ In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.

permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.²⁴ Currently, only Broward County has received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to “seek to increase governmental efficiency” and “maintain environmental standards.” Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.²⁵

According to the statute, delegation includes the applicability of chapter 120, F. S., (the APA), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a “delegation agreement” executed between the two parties.

The PCS requires any county having a population of 200,000 or more, or a municipality that has local pollution control programs regulating wetlands within its geographic boundary and serving populations of more than 100,000, to apply for delegation of ERP authority on or before Jun 1, 2012. Local governments that fail to receive delegation of all or part of ERP authority within one year or June 1, 2013, may not require permits that are substantially similar to the requirements needed to obtain an ERP from the DEP or a WMD. The PCS includes a grandfather clause for local governments that receive ERP delegation by June 1, 2012.

The PCS specifies that the DEP is responsible for all ERP delegations to local governments. The DEP must approve or deny the application with one year of receipt. If a delegation is denied, a challenge to the denial tolls the one year deadline until the issue is resolved. The PCS also prohibits a WMD from regulating activities subject to a delegated authority unless specifically required to do so in a delegation agreement.

The PCS does not prohibit or limit a local government from regulating wetlands or surface waters after June 1, 2012, if it receives delegation of all or part of ERP authority within one year of application. If an application is denied, the same tolling provision applies until the issue is resolved.

Section 15 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

²⁴ Florida Dep’t of Environmental Protection, *Delegations*, available at <http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf> (last visited Mar. 26, 2011).

²⁵ Rule 62-344, F.A.C., provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The PCS provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The PCS allows applicants who were previously denied coverage to reapply.

Section 16 amends s. 380.06, F.S., relating to solid mineral mining activities.

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.²⁶ Regional planning councils assist the developer by coordinating multi-agency developments of regional impact (DRI) review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews DRIs for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.²⁷

The PCS exempts any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from DRI review. Any proposed changes to any previously approved solid mineral mine DRI's development orders having vested rights will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.²⁸ Any previously approved solid mineral mine DRI development orders will continue to be effective unless rescinded by the developer. The PCS also provides that all local government regulations of proposed solid mineral mines or addition, expansion or change to solid mineral mines remain in effect.

Section 17 amends s. 403.1838, F.S., relating to the small community sewer construction act.

²⁶ Section 380.06(1), F.S.

²⁷ Section 380.06(24), F.S.

²⁸ Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design, and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The PCS increases the population size to 10,000 or fewer to qualify as a financially disadvantaged small community.

Section 18 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(t), F.S., a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility, also called an inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.²⁹ The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.³⁰

The PCS specifies that any inland multimodal facility that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

²⁹ Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Mar. 26, 2011).

³⁰ Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at <http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/> (last visited Mar. 26, 2011).

Section 19 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

“Zone of Discharge” is defined in Rule 62-520.200(27), F.A.C. It means “a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded.” Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

Further, Rule 62-520.200(10), F.A.C., defines “existing installation” as:

[A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations don't have a permit or groundwater monitoring plan. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The PCS authorizes zones of discharge to groundwater from the property boundary to the base of the uppermost aquifer or a specifically designated aquifer or aquifers. Discharges occurring within a zone of discharge or on land that is over a zone of discharge do not create liability under chapters 373 or 376 for site cleanup. The PCS also specifies that exceedances of soil cleanup target levels do not constitute a basis for enforcement or site cleanup.

Section 20 amends s. 403.087, F.S., relating to revocation of permits.

Currently, the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.³¹

³¹ Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person

The PCS allows the DEP to revoke a permit if the permit holder failed to submit required operational reports or other information that directly relate to the permit and has refused to correct or cure such violations when requested to do so. It also clarifies that the DEP may revoke a permit when a permit holder has refused a lawful inspection at a specific permitted facility.

Section 21 creates s. 403.0874, F.S., relating to the “Florida Incentive Based Permitting Act.”

There were several bills introduced during the 2007 Regular Session that addressed incentive-based permitting.³² Ultimately, none passed. Currently, the DEP has no comprehensive program to reward those in the regulated community who consistently meet or exceed their permit requirements, although having a record of compliance may lead to increased permit durations in some instances.³³ However, the DEP does not consistently consider applicants’ past violations or compliance when reviewing requests for new permits.

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility. In addition to listed permit requirements, pursuant to Rule 62-4.070(5), F.A.C., the DEP must consider environmental violations of the applicant, at any location in the state, when determining whether the applicant has provided the necessary “reasonable assurance” that it will be able to meet the permit requirements. However, the rule does not specify exactly which violations may be considered, leading to inconsistent application throughout the DEP’s permitting programs.

Within certain individual program areas of the DEP, additional rules or statutes narrow the scope of Rule 62-620.320, F.A.C. For example, s. 403.707(8), F.S., authorizes the DEP to deny a permit application for a solid waste management facility if an applicant has repeatedly violated statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and is deemed to be irresponsible, as defined by Rule 62-701.320(3)(b), F.A.C. For wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the “reasonable assurance” determination.³⁴ For ERPs, the DEP considers specific ERP rule and permit violations.³⁵ Similar to Rule 62-620.320, F.A.C., none of these programmatic rules or statutes provide guidance as to what type of violations should be considered or how far back into an applicant’s history the DEP should review.

Additionally, under s. 403.0611, F.S., the DEP has statutory authority to adopt alternative permitting programs on a pilot project basis. The Legislature directed the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution. To date the DEP has not implemented a pilot program under this section.

obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

³² See SB 738, HB 297 and HB 7171 (2007 Reg. Session).

³³ See s. 403.087(3), F.S.

³⁴ See Rule 62-620.320, F.A.C.

³⁵ See Rule 40B-400.104(2), F.A.C.

In June of 2000, the EPA established the National Environmental Performance Track program. The EPA discontinued the program in March 2009.³⁶ The last year data are available for the program is 2007. The goal of the program was for government to complement existing programs with tools and strategies that protected people and the environment, reduced cost and spurred technological innovation.³⁷ Benefits of membership included exclusive regulatory and administrative benefits, reduced routine inspections, and public recognition.³⁸

The PCS creates s. 403.0874, F.S., the “Florida Incentive-based Permitting Act.” It establishes the Legislature’s finding that the DEP should consider a permit applicant’s site-specific and program-specific history of compliance when considering whether to issue, renew, amend or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This PCS applies to all persons and regulated activities subject to permitting requirements of chs. 161, 373, and 403, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However, it does not apply to environmental permitting or authorization laws that regulate zoning, growth management or land use. Additionally, it does not apply where its implementation would jeopardize the state’s delegation or assumption of federal law or permit programs. “Regulated activities” within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system or project, for which a permit, certification or authorization is required under chs. 161, 373 and 403, F.S.

The PCS directs the DEP to consider permit applicants’ compliance histories for 10 years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least eight of the 10 years prior; or
- Have conducted the same regulated activity at a different site within the state for at least eight of the last 10 years prior; and
- Not have been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge (ALJ) or civil or criminal court found the applicant violated any environmental law or rule or otherwise been subject to an administrative settlement or consent order that established a violation of an applicable law or rule; and
- Demonstrate that during the 10-year compliance history period, the implementation of activities or practices that reduced discharges or emissions, reduced impacts to public lands or natural resources, and implemented voluntary environmental performance programs.

³⁶ U.S. Environmental Protection Agency, Letter to Performance Track Partners, available at http://www.epa.gov/performancetrack/downloads/PTClosure_MEMO_CKent.pdf (last visited Mar. 26, 2011).

³⁷ U.S. Environmental Protection Agency, *National Environmental Performance Track*, available at <http://www.epa.gov/performancetrack/> (last visited Mar. 26, 2011).

³⁸ *Id.*

The PCS requires that an applicant must request applicable compliance incentives at the time of application submittal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 30 days after the application is filed and final agency action shall be taken no later than 60 days after the application is deemed complete;
- Priority review of permit applications;
- Reduced number of routine compliance inspections;
- No more than two requests for additional information under s. 120.60, F.S.; and
- Longer permit durations.

Furthermore, the PCS allows the DEP adopt additional incentives by rule, which are binding on the WMDs and any local government that has been delegated or assumed a regulatory program to which the incentive-based permitting program applies. The PCS also contains a savings clause related to an applicant's responsibility to provide assurances and to the DEP's, a WMD's or a local government's ability to consider factors when evaluating an application.

Section 22 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The PCS clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

Section 23 amends 403.707, F.S., relating to permitting of solid waste disposal.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by DEP. Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP

under this chapter or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The PCS allows an entity that is authorized by a permit or exemption to dispose of its own waste on its own property and to also dispose of the waste in other new areas of the property without further express authorization if the new areas are properly monitored. It also provides that permits issued to a solid waste management facility with a leachate control system will have a 20-year term, which applies to all solid waste management facilities that obtain an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 24 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.³⁹ Projects 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.

The PCS directs the DEP to create a general permit for construction, alteration, and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale;
- The project does not:
 - Cause adverse water quantity or flooding to receiving waters or adjacent lands;
 - Cause adverse impacts to existing surface water storage and conveyance capabilities;
 - Cause violations of state water quality standards;
 - Cause adverse impacts to the maintenance of surface or groundwater levels or surface water flows or a work of a WMD; and
- The water management system design plans are signed and sealed by a registered professional.

³⁹ Section 403.814(1), F.S.

Section 25 amends 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

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

Under s. 403.973, F.S., OTTED or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or
- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ'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 ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:
 - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
 - Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
 - Extract natural resources;
 - Produce oil; or
 - Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The PCS revises the structure and process for expedited permitting of targeted industries. It substitutes the Secretary of DEP, or his or her designee, for OTTED. It clarifies that commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs qualify for expedited review. The PCS requires regional teams to be established through the execution of a project-specific MOA. It also clarifies that subsection 403.973(14), F.S., applies to permits issued by the department pursuant to a federal program, but that the DEP, not the Governor, issues the final order for those permits. Finally, the PCS provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 26 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.⁴⁰

⁴⁰ U.S. Department of Energy's website: http://www.eere.energy.gov/afdc/incentives_laws_security.html.

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent. There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The bill provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The bill provided that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The PCS provides that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted above.

Section 27 creates an unnumbered section of law relating to the installation of fuel tank upgrades.

Rule 62-761.510, F.A.C., provides deadlines for Category-A and Category-B petroleum storage tank systems to meet the standards for secondary containment, Category-C storage tank systems by certain dates. The DEP has been regulating both underground and aboveground petroleum storage tank systems since 1983.⁴¹

The PCS extends the deadline to December 31, 2012, for entities to comply with petroleum tank upgrade requirements for those who bought their facilities in 2009. The extension applies even if the owners of the facilities have previously signed consent orders requiring earlier upgrades.

Section 28 amends 373.414, revising rules of the DEP relating to the Uniform Mitigation Assessment Method (UMAM) for activities in surface waters and wetlands.

Subsection 373.414(18), F.S., directed the DEP and WMDs, in cooperation with local governments and the relevant federal agencies, to develop a state-wide method to determine the amount of mitigation required for regulatory permits. The UMAM rule⁴² went into effect on February 2, 2004. Although only the DEP was required to adopt the method by rule, it is now the sole means for all state entities (DEP, WMDs, local governments and other governmental entities) to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to determine mitigation bank credits awarded and debited.

The rule is not intended to affect the many other aspects of wetland regulation that remain intact in current rules, such as ascertaining that the direct and secondary impacts have been reduced or eliminated, that the project does not result in unacceptable cumulative impacts, the appropriateness of the mitigation, and so forth.

Although UMAM is used by all state and local agencies, the state cannot require the Corps to use it. Nonetheless, the Corps' Jacksonville office conducted a study of UMAM and recommended that it be used for federal wetland regulatory purposes starting August 1, 2005. The Corps continues to use its time lag table rather than the state's time lag table for assessment purposes. The time lag associated with mitigation means the period of time between when the wetland functions are lost at an impact site and when the mitigation site has achieved the outcome that was scored as part of the UMAM process.

The PCS incorporates many aspects of the UMAM rule into subsection 373.414(18), F.S. The PCS provides clearer DEP oversight to ensure consistency in statewide application. It also allows any mitigation banker to apply for a reassessment of mitigation credits pursuant to the proposed changes if the request is made no later than September 30, 2011.

Section 29 amends 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Mitigation Banks are permitted by the DEP or a WMD that have adopted rules, based on the location of the bank and activity-based considerations. Additionally, a mitigation bank requires

⁴¹ Florida Dep't of Environmental Protection, *Storage Tank Regulation*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Apr. 11, 2011).

⁴² See Rule 62-345, F.A.C.

federal authorization in the form of a Mitigation Bank Instrument signed by several agencies, with the Corps as lead. The mitigation bank applicant is strongly encouraged to have at least one pre-application meeting with an interagency Mitigation Bank Review Team, consisting of all state and federal agencies that will be involved in processing the permit. Both public and private entities are eligible to set up and operate mitigation banks if they can show sufficient legal interest in the property to operate the bank and can meet financial responsibility requirements. Special provisions apply to WMD and DEP operated banks.⁴³

The PCS provides, for mitigation banks subject to UMAM, that the number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using the UMAM adopted pursuant to 373.414(18), F.S. It strikes language allowing for methodologies other than UMAM.

Section 30 amends 218.075, F.S., relating to reduction or waiver of permit fees.

The DEP and WMDs are required to reduce or waive permit fees for counties and municipalities with certain populations.

The PCS adds entities created by special act or local ordinance or interlocal agreement of local governments to the list of those who qualify for reduced or waive permit fees.

Section 31 provides an effective of July 1, 2011.

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.

⁴³ Florida Dep't of Environmental Protection, *Mitigation and Mitigation Banking*, <http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm> (last visited Apr. 10, 2011).

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs for those who qualify for incentive-based rewards will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated at this point.

Defendant parties to administrative hearings may save on litigation costs as their burdens will be reduced. Alternatively, the costs for interested third parties in administrative hearings will likely increase as their burdens for persuasion and evidence will be increased or shifted to them.

Private mitigation banks should see significant increases in revenue as they will be the required method of mitigation for many projects. However, the total impact cannot be determined at this time.

C. Government Sector Impact:

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. Conversely, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues.

The WMDs have expressed concerns that the changes to the DOT mitigation funding scheme may leave them with insufficient funds to provide mitigation for DOT projects. Further, mitigation costs for certain DOT projects may increase because of the requirement that private mitigation banks be used regardless of whether they are the most cost-effective mitigation option available.

The DEP and the WMDs will see reduced permit revenue from the additional exemption applied to entities that qualify for a reduction or waiver of permit processing fees.

Miami-Dade County has expressed reservations with the provision that diverts rockmining fees away from drinking water treatment facilities. Even though the diversion is for a limited time (until December 31, 2017), it will adversely impact the county's ability to design and construct the additional treatment facilities to protect the drinking water supply in the area. This fee is \$0.15 per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

In section 14 of the PCS, local governments who do not receive delegation of ERP authority within one year or by June 1, 2013 are prohibited from requiring substantially similar permits. The dates can be inconsistently applied. Questions may arise as to what date applies and under what circumstances.

VII. Related Issues:

In section 11 of the PCS, language that notice of agency action must be provided within 60 days will create an unintended problem for the DEP. For some types of smaller projects, the DEP does not issue notices of intent to issue, but simply issues the permit with the notice of rights included on the permit. This language could be construed to mean that the DEP must always issue an intent to issue, which would actually slow down the permitting process.

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

None.

B. Amendments:

None.



305080

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 645 - 650

and insert:

(4) A state agency may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit approval from any other local agency unless the pending project is inconsistent with the local comprehensive plan or land development code as determined by the local government. Notwithstanding the foregoing, a state agency may not require a permit or approval from another agency of the state or a federal agency without



305080

13 explicit statutory authority to require such permit or approval
14 from another state or federal agency.

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

17 And the title is amended as follows:

18 Between lines 43 and 44

19 insert:

20 prohibiting conditional approvals for a permit or
21 completing a pending application unless certain
22 conditions are met;



714966

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 1212 and 1213
insert:
Section 23. Section 403.70611, Florida Statutes, is amended
to read:

403.70611 Requirements relating to solid waste disposal
facility permitting.—

(1) Local government applicants for a permit to construct
or expand a Class I landfill are encouraged to consider
construction of a waste-to-energy facility as an alternative to
additional landfill space.



714966

13 (2) The Department of Environmental Protection may not
14 issue a construction permit for a new privately owned Class I
15 landfill that will be located within 75 miles of an active Class
16 I landfill.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Between lines 100 and 101

21 insert:

22 403.70611, F.S.; prohibiting the Department of
23 Environmental Protection from issuing construction
24 permit for certain Class I landfills; amending s.



123930

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 184 - 209.

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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to environmental permitting;



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 945 - 976.

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

And the title is amended as follows:

Delete lines 119 - 123

and insert:

the general permits;



754684

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Environmental Preservation and Conservation
(Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 188 - 209
and insert:

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding shall be for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration shall be made by entering into evidence the application and material



754684

13 submitted to the agency in support of the application, the
14 agency's staff report and notice of intent to approve the
15 permit, license, or conceptual approval, which the petitioner
16 shall rebut with competent and substantial evidence. The permit
17 applicant and agency may on rebuttal present any evidence
18 relevant to demonstrating that the application meets the
19 conditions for issuance. Notwithstanding subsection (1), this
20 paragraph applies to proceedings under s. 120.574.

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete lines 3 - 7

25 and insert:

26 s. 120.569, F.S.; requiring that a nonapplicant who
27 petitions to challenge an agency's issuance of a
28 license or conceptual approval rebut with competent
29 and substantial evidence certain evidence submitted by
30 the agency;



951764

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete lines 470 - 473
and insert:
districts, including the use of mitigation banks or any other
mitigation options that satisfy state and federal requirements
~~established~~



887788

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete lines 570 - 571
and insert:
the districts shall utilize



891122

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete line 582
and insert:
districts shall also consider the purchase of credits from



588044

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete lines 586 - 589
and insert:
would offset the impact of the transportation project, provide
equal benefits to the water resources than other mitigation
options being considered, and provide the most cost effective
mitigation option. The mitigation plan shall be submitted to the



528796

LEGISLATIVE ACTION

Senate

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House

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete line 552
and insert:
the Department of Transportation's or the participating
authorities'



975266

EP.EP.04006

Proposed Committee Substitute by the Committee on Environmental
Preservation and Conservation

A bill to be entitled

An act relating to environmental permitting; amending
s. 120.569, F.S.; providing that a nonapplicant who
petitions to challenge an agency's issuance of a
license or conceptual approval in certain
circumstances has the burden of ultimate persuasion
and the burden of going forward with evidence;
amending s. 125;022, F.S.; prohibiting a county from
requiring an applicant to obtain a permit or approval
from another state or federal agency as a condition of
approving a development permit under certain
conditions; authorizing a county to attach certain
disclaimers to the issuance of a development permit;
creating s. 161.032, F.S.; requiring that the
Department of Environmental Protection review an
application for certain permits under the Beach and
Shore Preservation Act and request additional
information within a specified time; requiring that
the department proceed to process the application if
the applicant believes that a request for additional
information is not authorized by law or rule;
extending the period for an applicant to timely submit
additional information, notwithstanding certain
provisions of the Administrative Procedure Act;
amending s. 166.033, F.S.; prohibiting a municipality
from requiring an applicant to obtain a permit or
approval from another state or federal agency as a



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EP.EP.04006

28 condition of approving a development permit under
29 certain conditions; authorizing a county to attach
30 certain disclaimers to the issuance of a development
31 permit; amending s. 258.397, F.S.; specifying
32 additional uses and activities in the Biscayne Bay
33 Aquatic Preserve; amending s. 373.026, F.S.; requiring
34 the Department of Environmental Protection to expand
35 its use of Internet-based self-certification services
36 for exemptions and permits issued by the department
37 and water management districts; amending s. 373.4141,
38 F.S.; requiring that a request by the department or a
39 water management district that an applicant provide
40 additional information be accompanied by the signature
41 of specified officials of the department or district;
42 reducing the time within which the department or
43 district must approve or deny a permit application;
44 amending s. 373.4144, F.S.; providing legislative
45 intent with respect to the coordination of regulatory
46 duties among specified state and federal agencies;
47 requiring that the department report annually to the
48 Legislature on efforts to expand the state
49 programmatic general permit or regional general
50 permits; providing for a voluntary state programmatic
51 general permit for certain dredge and fill activities;
52 amending s. 373.441, F.S.; requiring that certain
53 counties or municipalities apply by a specified date
54 to the department or water management district for
55 authority to require certain permits; providing that
56 following such delegation, the department or district



975266

EP.EP.04006

57 may not regulate activities that are subject to the
58 delegation; clarifying the authority of local
59 governments to adopt pollution control programs under
60 certain conditions; amending s. 376.30715, F.S.;

61 providing that the transfer of a contaminated site
62 from an owner to a child or corporate entity does not
63 disqualify the site from the innocent victim petroleum
64 storage system restoration financial assistance
65 program; authorizing certain applicants to reapply for
66 financial assistance; amending s. 403.061, F.S.;

67 requiring the Department of Environmental Protection
68 to establish reasonable zones of mixing for discharges
69 into specified waters; providing that certain
70 discharges do not create liability for site cleanup;

71 providing that exceedance of soil cleanup target
72 levels is not a basis for enforcement or cleanup;

73 creating s. 403.0874, F.S.; providing a short title;

74 providing legislative findings and intent with respect
75 to the consideration of the compliance history of a
76 permit applicant; providing for applicability;

77 specifying the period of compliance history to be
78 considered is issuing or renewing a permit; providing
79 criteria to be considered by the Department of
80 Environmental Protection; authorizing expedited review
81 of permit issuance, renewal, modification, and
82 transfer; providing for a reduced number of
83 inspections; providing for extended permit duration;

84 authorizing the department to make additional
85 incentives available under certain circumstances;



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EP.EP.04006

86 providing for automatic permit renewal and reduced or
87 waived fees under certain circumstances; requiring the
88 department to adopt rules that are binding on a water
89 management district or local government that has been
90 delegated certain regulatory duties; amending ss.
91 161.041 and 373.413, F.S.; specifying that s.
92 403.0874, F.S., authorizing expedited permitting,
93 applies to provisions governing beaches and shores and
94 surface water management and storage; amending s.
95 403.087, F.S.; revising conditions under which the
96 department is authorized to revoke a permit; amending
97 s. 403.1838, F.S.; revising the term "financially
98 disadvantaged small community"; amending s. 403.7045,
99 F.S.; specifying that sludge from industrial waste
100 treatment works is not solid wastes; amending s.
101 403.707, F.S.; revising provisions relating to
102 disposal by persons of solid waste resulting from
103 their own activities on their property; clarifying
104 what constitutes "addressed by a groundwater
105 monitoring plan" with regard to certain effects on
106 groundwater and surface waters; authorizing the
107 disposal of solid waste over a zone of discharge;
108 providing that exceedance of soil cleanup target
109 levels is not a basis for enforcement or cleanup;
110 extending the duration of all permits issued to solid
111 waste management facilities; providing applicability;
112 providing that certain disposal of solid waste does
113 not create liability for site cleanup; amending s.
114 403.814, F.S.; providing for issuance of general



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EP.EP.04006

115 permits for the construction, alteration, and
116 maintenance of certain surface water management
117 systems without the action of the department or a
118 water management district; specifying conditions for
119 the general permits; amending s. 380.06, F.S.;
120 exempting a proposed solid mineral mine or a proposed
121 addition or expansion of an existing solid mineral
122 mine from provisions governing developments of
123 regional impact; providing certain exceptions;
124 amending ss. 380.0657 and 403.973, F.S.; authorizing
125 expedited permitting for certain inland multimodal
126 facilities and for commercial or industrial
127 development projects that individually or collectively
128 will create a minimum number of jobs; providing for a
129 project-specific memorandum of agreement to apply to a
130 project subject to expedited permitting; providing for
131 review and certification of a business as eligible for
132 expedited permitting by the Secretary of Environmental
133 Protection rather than by the Office of Tourism,
134 Trade, and Economic Development; amending s.163.3180,
135 F.S.; providing an exemption to the level-of-service
136 standards adopted under the Strategic Intermodal
137 System for certain inland multimodal facilities;
138 specifying project criteria; amending s. 373.4137,
139 F.S., relating to transportation projects; revising
140 legislative findings with respect to the options for
141 mitigation; revising certain requirements for
142 determining the habitat impacts of transportation
143 projects; requiring water management districts to



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144 purchase credits from public or private mitigation
145 banks under certain conditions; providing for the
146 release of certain mitigation funds held for the
147 benefit of a water management district if a project is
148 excluded from a mitigation plan; revising the
149 procedure for excluding a project from a mitigation
150 plan; amending s. 373.41492, F.S.; imposing a
151 mitigation fee for mining activities within the Miami-
152 Dade County Lake Belt Area; authorizing the use of
153 proceeds from the water treatment plant upgrade fee to
154 pay for specified mitigation projects; requiring
155 proceeds from the water treatment plant upgrade fee to
156 be transferred by the Department of Revenue to the
157 South Florida Water Management District and deposited
158 into the Lake Belt Mitigation Trust Fund for a
159 specified period of time; providing, after that
160 period, for the proceeds of the water treatment plant
161 upgrade fee to return to being transferred by the
162 Department of Revenue to a trust fund established by
163 Miami-Dade County for specified purposes; conforming a
164 term; amending s. 526.203, F.S.; authorizing the sale
165 of unblended fuels for certain uses; revising rules of
166 the Department of Environmental Protection relating to
167 the uniform mitigation assessment method for
168 activities in surface waters and wetlands; directing
169 the Department of Environmental Protection to make
170 additional changes to conform; providing for
171 reassessment of mitigation banks under certain
172 conditions; amending s. 373.4136, F.S.; clarifying the



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173 use of the uniform mitigation assessment method for
174 mitigation credits for the establishment and operation
175 of mitigation banks; providing for fuel tank system
176 deadlines and exemption; amending s. 373.414, F.S.;
177 revising uniform mitigation assessment method
178 implementation; amending s. 218.075, F.S; revising
179 requirements regarding reducing or waiving permit
180 processing fees; providing an effective date.

181

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

183

184 Section 1. Paragraph (p) is added to subsection (2) of
185 section 120.569, Florida Statutes, to read:

186 120.569 Decisions which affect substantial interests.—

187 (2)

188 (p) For any proceeding arising under chapter 373, chapter
189 378, or chapter 403, if a nonapplicant petitions as a third
190 party to challenge an agency's issuance of a license, permit, or
191 conceptual approval, the order of presentation in the proceeding
192 shall be for the permit applicant to present a prima facie case
193 demonstrating entitlement to the license, permit, or conceptual
194 approval, followed by the agency. This demonstration may be made
195 by simply entering into evidence the application and relevant
196 material submitted to the agency in support of the application,
197 and the agency's staff report or notice of intent to approve the
198 permit, license, or conceptual approval. Subsequent to the
199 presentation of the applicant's prima facie case and any direct
200 evidence submitted by the agency, the petitioner initiating the
201 action challenging the issuance of the license, permit, or



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202 conceptual approval has the ultimate burden of persuasion and
203 has the burden of going forward to prove its case in opposition
204 to the license, permit, or conceptual approval through the
205 presentation of competent and substantial evidence. The permit
206 applicant and agency may on rebuttal present any evidence
207 relevant to demonstrating that the application meets the
208 conditions for issuance. Notwithstanding subsection (1), this
209 paragraph applies to proceedings under s. 120.574.

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

212 125.022 Development permits.—When a county denies an
213 application for a development permit, the county shall give
214 written notice to the applicant. The notice must include a
215 citation to the applicable portions of an ordinance, rule,
216 statute, or other legal authority for the denial of the permit.
217 As used in this section, the term “development permit” has the
218 same meaning as in s. 163.3164. A county may not require as a
219 condition of processing a development permit that an applicant
220 obtain a permit or approval from any other state or federal
221 agency unless the agency has issued a notice of intent to deny
222 the federal or state permit before the county action on the
223 local development permit. Issuance of a development permit by a
224 county does not in any way create any rights on the part of the
225 applicant to obtain a permit from another state or federal
226 agency and does not create any liability on the part of the
227 county for issuance of the permit if the applicant fails to
228 fulfill its legal obligations to obtain requisite approvals or
229 fulfill the obligations imposed by another state or a federal
230 agency. A county may attach such a disclaimer to the issuance of



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231 a development permit, and may include a permit condition that
232 all other applicable state or federal permits be obtained before
233 commencement of the development. This section does not prohibit
234 a county from providing information to an applicant regarding
235 what other state or federal permits may apply.

236 Section 3. Section 161.032, Florida Statutes, is created to
237 read:

238 161.032 Application review; request for additional
239 information.—

240 (1) Within 30 days after receipt of an application for a
241 permit under this part, the department shall review the
242 application and shall request submission of any additional
243 information the department is permitted by law to require. If
244 the applicant believes that a request for additional information
245 is not authorized by law or rule, the applicant may request a
246 hearing pursuant to s. 120.57. Within 30 days after receipt of
247 such additional information, the department shall review such
248 additional information and may request only that information
249 needed to clarify such additional information or to answer new
250 questions raised by or directly related to such additional
251 information. If the applicant believes that the request for such
252 additional information by the department is not authorized by
253 law or rule, the department, at the applicant's request, shall
254 proceed to process the permit application.

255 (2) Notwithstanding s. 120.60, an applicant for a permit
256 under this part has 90 days after the date of a timely request
257 for additional information to submit such information. If an
258 applicant requires more than 90 days in order to respond to a
259 request for additional information, the applicant must notify



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260 the agency processing the permit application in writing of the
261 circumstances, at which time the application shall be held in
262 active status for no more than one additional period of up to 90
263 days. Additional extensions may be granted for good cause shown
264 by the applicant. A showing that the applicant is making a
265 diligent effort to obtain the requested additional information
266 constitutes good cause. Failure of an applicant to provide the
267 timely requested information by the applicable deadline shall
268 result in denial of the application without prejudice.

269 (3) Notwithstanding any other provision of law, the
270 department is authorized to issue permits pursuant to this part
271 in advance of the issuance of any incidental take authorization
272 as provided for in the Endangered Species Act and its
273 implementing regulations if the permits and authorizations
274 include a condition requiring that authorized activities shall
275 not commence until such incidental take authorization is issued.

276 Section 4. Subsections (5), (6), and (7) are added to
277 section 161.041, Florida Statutes, to read:

278 161.041 Permits required.-

279 (5) The provisions of s. 403.0874, relating to the
280 incentive-based permitting program, apply to all permits issued
281 under this chapter.

282 (6) The department may not require as a permit condition
283 sediment quality specifications or turbidity standards more
284 stringent than those provided for in this chapter, chapter 373,
285 or the Florida Administrative Code. The department may not issue
286 guidelines that are enforceable as standards without going
287 through the rulemaking process pursuant to chapter 120.

288 (7) As an incentive for permit applicants, it is the



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289 Legislature's intent to simplify the permitting for periodic
290 maintenance of beach renourishment projects previously permitted
291 and restored under the Joint Coastal Permit process pursuant to
292 this section or part IV of chapter 373. The department shall
293 amend chapters 62B-41 and 62B-49, Florida Administrative Code,
294 as necessary, to streamline the permitting process for periodic
295 maintenance projects.

296 Section 5. Subsection (10) of section 163.3180, Florida
297 Statutes, is amended to read:

298 163.3180 Concurrency.—

299 (10) (a) Except in transportation concurrency exception
300 areas, with regard to roadway facilities on the Strategic
301 Intermodal System designated in accordance with s. 339.63, local
302 governments shall adopt the level-of-service standard
303 established by the Department of Transportation by rule.
304 However, if the Office of Tourism, Trade, and Economic
305 Development concurs in writing with the local government that
306 the proposed development is for a qualified job creation project
307 under s. 288.0656 or s. 403.973, the affected local government,
308 after consulting with the Department of Transportation, may
309 provide for a waiver of transportation concurrency for the
310 project. For all other roads on the State Highway System, local
311 governments shall establish an adequate level-of-service
312 standard that need not be consistent with any level-of-service
313 standard established by the Department of Transportation. In
314 establishing adequate level-of-service standards for any
315 arterial roads, or collector roads as appropriate, which
316 traverse multiple jurisdictions, local governments shall
317 consider compatibility with the roadway facility's adopted



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318 level-of-service standards in adjacent jurisdictions. Each local
319 government within a county shall use a professionally accepted
320 methodology for measuring impacts on transportation facilities
321 for the purposes of implementing its concurrency management
322 system. Counties are encouraged to coordinate with adjacent
323 counties, and local governments within a county are encouraged
324 to coordinate, for the purpose of using common methodologies for
325 measuring impacts on transportation facilities for the purpose
326 of implementing their concurrency management systems.

327 (b) There shall be a limited exemption from the Strategic
328 Intermodal System adopted level-of-service standards for new or
329 redevelopment projects consistent with the local comprehensive
330 plan as inland multimodal facilities receiving or sending cargo
331 for distribution and providing cargo storage, consolidation,
332 repackaging, and transfer of goods, and which may, if developed
333 as proposed, include other intermodal terminals, related
334 transportation facilities, warehousing and distribution
335 facilities, and associated office space, light industrial,
336 manufacturing, and assembly uses. The limited exemption applies
337 if the project meets all of the following criteria:

338 1. The project will not cause the adopted level-of-service
339 standards for the Strategic Intermodal System facilities to be
340 exceeded by more than 150 percent within the first 5 years of
341 the project's development.

342 2. The project, upon completion, would result in the
343 creation of at least 50 full-time jobs.

344 3. The project is compatible with existing and planned
345 adjacent land uses.

346 4. The project is consistent with local and regional



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347 economic development goals or plans.

348 5. The project is proximate to regionally significant road
349 and rail transportation facilities.

350 6. The project is proximate to a community having an
351 unemployment rate, as of the date of the development order
352 application, which is 10 percent or more above the statewide
353 reported average.

354 Section 6. Section 166.033, Florida Statutes, is amended to
355 read:

356 166.033 Development permits.—When a municipality denies an
357 application for a development permit, the municipality shall
358 give written notice to the applicant. The notice must include a
359 citation to the applicable portions of an ordinance, rule,
360 statute, or other legal authority for the denial of the permit.
361 As used in this section, the term “development permit” has the
362 same meaning as in s. 163.3164. A municipality may not require
363 as a condition of processing a development permit, that an
364 applicant obtain a permit or approval from any other state or
365 federal agency unless the agency has issued a notice of intent
366 to deny the federal or state permit before the municipal action
367 on the local development permit. Issuance of a development
368 permit by a municipality does not in any way create any right on
369 the part of an applicant to obtain a permit from another state
370 or federal agency and does not create any liability on the part
371 of the municipality for issuance of the permit if the applicant
372 fails to fulfill its legal obligations to obtain requisite
373 approvals or fulfill the obligations imposed by another state or
374 federal agency. A municipality may attach such a disclaimer to
375 the issuance of development permits and may include a permit



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376 condition that all other applicable state or federal permits be
377 obtained before commencement of the development. This section
378 does not prohibit a municipality from providing information to
379 an applicant regarding what other state or federal permits may
380 apply.

381 Section 7. Paragraphs (a) and (b) of subsection (3) of
382 section 258.397, Florida Statutes, are amended to read:

383 258.397 Biscayne Bay Aquatic Preserve.—

384 (3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the
385 Internal Improvement Trust Fund is authorized and directed to
386 maintain the aquatic preserve hereby created pursuant and
387 subject to the following provisions:

388 (a) No further sale, transfer, or lease of sovereignty
389 submerged lands in the preserve shall be approved or consummated
390 by the board of trustees, except upon a showing of extreme
391 hardship on the part of the applicant and a determination by the
392 board of trustees that such sale, transfer, or lease is in the
393 public interest. A municipal applicant proposing a project under
394 this subsection is exempt from showing extreme hardship.

395 (b) No further dredging or filling of submerged lands of
396 the preserve shall be approved or tolerated by the board of
397 trustees except:

398 1. Such minimum dredging and spoiling as may be authorized
399 for public navigation projects or for such minimum dredging and
400 spoiling as may be constituted as a public necessity or for
401 preservation of the bay according to the expressed intent of
402 this section.

403 2. Such other alteration of physical conditions, including
404 the placement of riprap, as may be necessary to enhance the



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405 quality and utility of the preserve.

406 3. Such minimum dredging and filling as may be authorized
407 for the creation and maintenance of marinas, piers, and docks
408 and their attendant navigation channels and access roads. Such
409 projects may only be authorized upon a specific finding by the
410 board of trustees that there is assurance that the project will
411 be constructed and operated in a manner that will not adversely
412 affect the water quality and utility of the preserve. This
413 subparagraph shall not authorize the connection of upland canals
414 to the waters of the preserve.

415 4. Such dredging as is necessary for the purpose of
416 eliminating conditions hazardous to the public health or for the
417 purpose of eliminating stagnant waters, islands, and spoil
418 banks, the dredging of which would enhance the aesthetic and
419 environmental quality and utility of the preserve and be clearly
420 in the public interest as determined by the board of trustees.

421 5. Such dredging and filling as is necessary for the
422 creation of public waterfront promenades.

423
424 Any dredging or filling under this subsection or
425 improvements under subsection (5) shall be approved only after
426 public notice as provided by s. 253.115.

427 Section 8. Subsection (10) is added to section 373.026,
428 Florida Statutes, to read:

429 373.026 General powers and duties of the department.—The
430 department, or its successor agency, shall be responsible for
431 the administration of this chapter at the state level. However,
432 it is the policy of the state that, to the greatest extent
433 possible, the department may enter into interagency or



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434 interlocal agreements with any other state agency, any water
435 management district, or any local government conducting programs
436 related to or materially affecting the water resources of the
437 state. All such agreements shall be subject to the provisions of
438 s. 373.046. In addition to its other powers and duties, the
439 department shall, to the greatest extent possible:

440 (10) Expand the use of Internet-based self-certification
441 services for appropriate exemptions and general permits issued
442 by the department and the water management districts, if such
443 expansion is economically feasible. In addition to expanding the
444 use of Internet-based self-certification services for
445 appropriate exemptions and general permits, the department and
446 water management districts shall identify and develop general
447 permits for appropriate activities currently requiring
448 individual review that could be expedited through the use of
449 applicable professional certification.

450 Section 9. Subsection (6) is added to section 373.413,
451 Florida Statutes, to read:

452 373.413 Permits for construction or alteration.—

453 (6) The provisions of s. 403.0874, relating to the
454 incentive-based permitting program, apply to permits issued
455 under this section.

456 Section 10. Subsections (1) and (2), paragraph (c) of
457 subsection (3), and subsection (4) of section 373.4137, Florida
458 Statutes, are amended to read:

459 Mitigation requirements for specified transportation
460 projects.—

461 (1) The Legislature finds that environmental mitigation for
462 the impact of transportation projects proposed by the Department



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463 of Transportation or a transportation authority established
464 pursuant to chapter 348 or chapter 349 can be more effectively
465 achieved by regional, long-range mitigation planning rather than
466 on a project-by-project basis. It is the intent of the
467 Legislature that mitigation to offset the adverse effects of
468 these transportation projects be funded by the Department of
469 Transportation and be carried out by the water management
470 districts, through including the use of privately owned
471 mitigation banks where available or, if a privately owned
472 mitigation bank is not available, through any other mitigation
473 options that satisfy state and federal requirements established
474 pursuant to this part.

475 (2) Environmental impact inventories for transportation
476 projects proposed by the Department of Transportation or a
477 transportation authority established pursuant to chapter 348 or
478 chapter 349 shall be developed as follows:

479 (a) By July 1 of each year, the Department of
480 Transportation or a transportation authority established
481 pursuant to chapter 348 or chapter 349 which chooses to
482 participate in this program shall submit to the water management
483 districts a list copy of its projects in the adopted work
484 program and an environmental impact inventory of habitats
485 addressed in the rules adopted pursuant to this part and s. 404
486 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
487 by its plan of construction for transportation projects in the
488 next 3 years of the tentative work program. The Department of
489 Transportation or a transportation authority established
490 pursuant to chapter 348 or chapter 349 may also include in its
491 environmental impact inventory the habitat impacts of any future



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492 transportation project. The Department of Transportation and
493 each transportation authority established pursuant to chapter
494 348 or chapter 349 may fund any mitigation activities for future
495 projects using current year funds.

496 (b) The environmental impact inventory shall include a
497 description of these habitat impacts, including their location,
498 acreage, and type; state water quality classification of
499 impacted wetlands and other surface waters; any other state or
500 regional designations for these habitats; and a list ~~survey~~ of
501 threatened species, endangered species, and species of special
502 concern affected by the proposed project.

503 (3)

504 (c) Except for current mitigation projects in the
505 monitoring and maintenance phase and except as allowed by
506 paragraph (d), the water management districts may request a
507 transfer of funds from an escrow account no sooner than 30 days
508 prior to the date the funds are needed to pay for activities
509 associated with development or implementation of the approved
510 mitigation plan described in subsection (4) for the current
511 fiscal year, including, but not limited to, design, engineering,
512 production, and staff support. Actual conceptual plan
513 preparation costs incurred before plan approval may be submitted
514 to the Department of Transportation or the appropriate
515 transportation authority each year with the plan. The conceptual
516 plan preparation costs of each water management district will be
517 paid from mitigation funds associated with the environmental
518 impact inventory for the current year. The amount transferred to
519 the escrow accounts each year by the Department of
520 Transportation and participating transportation authorities



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521 established pursuant to chapter 348 or chapter 349 shall
522 correspond to a cost per acre of \$75,000 multiplied by the
523 projected acres of impact identified in the environmental impact
524 inventory described in subsection (2). However, the \$75,000 cost
525 per acre does not constitute an admission against interest by
526 the state or its subdivisions nor is the cost admissible as
527 evidence of full compensation for any property acquired by
528 eminent domain or through inverse condemnation. Each July 1, the
529 cost per acre shall be adjusted by the percentage change in the
530 average of the Consumer Price Index issued by the United States
531 Department of Labor for the most recent 12-month period ending
532 September 30, compared to the base year average, which is the
533 average for the 12-month period ending September 30, 1996. Each
534 quarter, the projected acreage of impact shall be reconciled
535 with the acreage of impact of projects as permitted, including
536 permit modifications, pursuant to this part and s. 404 of the
537 Clean Water Act, 33 U.S.C.s. 1344. The subject year's transfer
538 of funds shall be adjusted accordingly to reflect the acreage of
539 impacts as permitted. The Department of Transportation and
540 participating transportation authorities established pursuant to
541 chapter 348 or chapter 349 are authorized to transfer such funds
542 from the escrow accounts to the water management districts to
543 carry out the mitigation programs. Environmental mitigation
544 funds that are identified or maintained in an escrow account for
545 the benefit of a water management district may be released if
546 the associated transportation project is excluded in whole or
547 part from the mitigation plan. For a mitigation project that is
548 in the maintenance and monitoring phase, the water management
549 district may request and receive a one-time payment based on the



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550 project's expected future maintenance and monitoring costs. Upon
551 disbursement of the final maintenance and monitoring payment,
552 the department or the participating transportation authorities'
553 obligation will be satisfied, the water management district will
554 have continuing responsibility for the mitigation project, and
555 the escrow account for the project established by the Department
556 of Transportation or the participating transportation authority
557 may be closed. Any interest earned on these disbursed funds
558 shall remain with the water management district and must be used
559 as authorized under this section.

560 (4) Prior to March 1 of each year, each water management
561 district, in consultation with the Department of Environmental
562 Protection, the United States Army Corps of Engineers, the
563 Department of Transportation, participating transportation
564 authorities established pursuant to chapter 348 or chapter 349,
565 and other appropriate federal, state, and local governments, and
566 other interested parties, including entities operating
567 mitigation banks, shall develop a plan for the primary purpose
568 of complying with the mitigation requirements adopted pursuant
569 to this part and 33 U.S.C. s. 1344. In developing such plans,
570 private mitigation banks shall be used when available, and, when
571 a mitigation bank is not available, the districts shall utilize
572 sound ecosystem management practices to address significant
573 water resource needs and shall focus on activities of the
574 Department of Environmental Protection and the water management
575 districts, such as surface water improvement and management
576 (SWIM) projects and lands identified for potential acquisition
577 for preservation, restoration or enhancement, and the control of
578 invasive and exotic plants in wetlands and other surface waters,



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579 to the extent that such activities comply with the mitigation
580 requirements adopted under this part and 33 U.S.C. s. 1344. In
581 determining the activities to be included in such plans, the
582 districts shall ~~also consider the purchase of~~ credits from
583 public or private mitigation banks permitted under s. 373.4136
584 and associated federal authorization and shall include such
585 purchase as a part of the mitigation plan when such purchase
586 would offset the impact of the transportation project, ~~provide~~
587 ~~equal benefits to the water resources than other mitigation~~
588 ~~options being considered, and provide the most cost effective~~
589 ~~mitigation option.~~ The mitigation plan shall be submitted to the
590 water management district governing board, or its designee, for
591 review and approval. At least 14 days prior to approval, the
592 water management district shall provide a copy of the draft
593 mitigation plan to any person who has requested a copy.

594 (a) For each transportation project with a funding request
595 for the next fiscal year, the mitigation plan must include a
596 brief explanation of why a mitigation bank was or was not chosen
597 as a mitigation option, including an estimation of identifiable
598 costs of the mitigation bank and nonbank options to the extent
599 practicable.

600 (b) Specific projects may be excluded from the mitigation
601 plan, in whole or in part, and shall not be subject to this
602 section upon the election agreement of the Department of
603 Transportation, ~~or~~ a transportation authority if applicable, or
604 ~~and~~ the appropriate water management district ~~that the inclusion~~
605 ~~of such projects would hamper the efficiency or timeliness of~~
606 ~~the mitigation planning and permitting process.~~ The water
607 ~~management district may choose to exclude a project in whole or~~



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608 ~~in part if the district is unable to identify mitigation that~~
609 ~~would offset impacts of the project.~~

610 Section 11. Section 373.4141, Florida Statutes, is amended
611 to read:

612 373.4141 Permits; processing.—

613 (1) Within 30 days after receipt of an application for a
614 permit under this part, the department or the water management
615 district shall review the application and shall request
616 submittal of all additional information the department or the
617 water management district is permitted by law to require. If the
618 applicant believes any request for additional information is not
619 authorized by law or rule, the applicant may request a hearing
620 pursuant to s. 120.57. Within 30 days after receipt of such
621 additional information, the department or water management
622 district shall review it and may request only that information
623 needed to clarify such additional information or to answer new
624 questions raised by or directly related to such additional
625 information. If the applicant believes the request of the
626 department or water management district for such additional
627 information is not authorized by law or rule, the department or
628 water management district, at the applicant's request, shall
629 proceed to process the permit application. The department or
630 water management district may request additional information no
631 more than twice, unless the applicant waives this limitation in
632 writing. If the applicant does not provide a written response to
633 the second request for additional information within 90 days, or
634 another time period mutually agreed upon between the applicant
635 and department or water management district, the application
636 shall be considered withdrawn.



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637 (2) A permit shall be subject to a notice of proposed
638 agency action approved or denied within 60 ~~90~~ days after receipt
639 of the original application, the last item of timely requested
640 additional material, or the applicant's written request to begin
641 processing the permit application.

642 (3) Processing of applications for permits for affordable
643 housing projects shall be expedited to a greater degree than
644 other projects.

645 (4) A state agency or agency of the state may not require
646 as a condition of approval for a permit or as an item to
647 complete a pending permit application that an applicant obtain a
648 permit or approval from any other local, state or federal agency
649 without explicit statutory authority to require such permit or
650 approval from another agency.

651 Section 12. Section 373.4144, Florida Statutes, is amended
652 to read:

653 373.4144 Federal environmental permitting.-

654 (1) It is the intent of the Legislature to:

655 (a) Facilitate coordination and a more efficient process of
656 implementing regulatory duties and functions between the
657 Department of Environmental Protection, the water management
658 districts, the United States Army Corps of Engineers, the United
659 States Fish and Wildlife Service, the National Marine Fisheries
660 Service, the United States Environmental Protection Agency, the
661 Fish and Wildlife Conservation Commission, and other relevant
662 federal and state agencies.

663 (b) Authorize the Department of Environmental Protection to
664 obtain issuance by the United States Army Corps of Engineers,
665 pursuant to state and federal law and as set forth in this



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666 section, of an expanded state programmatic general permit, or a
667 series of regional general permits, for categories of activities
668 in waters of the United States governed by the Clean Water Act
669 and in navigable waters under the Rivers and Harbors Act of 1899
670 which are similar in nature, which will cause only minimal
671 adverse environmental effects when performed separately, and
672 which will have only minimal cumulative adverse effects on the
673 environment.

674 (c) Use the mechanism of such a state general permit or
675 such regional general permits to eliminate overlapping federal
676 regulations and state rules that seek to protect the same
677 resource and to avoid duplication of permitting between the
678 United States Army Corps of Engineers and the department for
679 minor work located in waters of the United States, including
680 navigable waters, thus eliminating, in appropriate cases, the
681 need for a separate individual approval from the United States
682 Army Corps of Engineers while ensuring the most stringent
683 protection of wetland resources.

684 (d) Direct the department not to seek issuance of or take
685 any action pursuant to any such permit or permits unless such
686 conditions are at least as protective of the environment and
687 natural resources as existing state law under this part and
688 federal law under the Clean Water Act and the Rivers and Harbors
689 Act of 1899. ~~The department is directed to develop, on or before~~
690 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
691 ~~maximum extent practicable, the federal and state wetland~~
692 ~~permitting programs. It is the intent of the Legislature that~~
693 ~~all dredge and fill activities impacting 10 acres or less of~~
694 ~~wetlands or waters, including navigable waters, be processed by~~



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695 ~~the state as part of the environmental resource permitting~~
696 ~~program implemented by the department and the water management~~
697 ~~districts. The resulting mechanism or plan shall analyze and~~
698 ~~propose the development of an expanded state programmatic~~
699 ~~general permit program in conjunction with the United States~~
700 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
701 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et~~
702 ~~seq., and s. 10 of the Rivers and Harbors Act of 1899.~~

703 ~~Alternatively, or in combination with an expanded state~~
704 ~~programmatic general permit, the mechanism or plan may propose~~
705 ~~the creation of a series of regional general permits issued by~~
706 ~~the United States Army Corps of Engineers pursuant to the~~
707 ~~referenced statutes. All of the regional general permits must be~~
708 ~~administered by the department or the water management districts~~
709 ~~or their designees.~~

710 (2) In order to effectuate efficient wetland permitting and
711 avoid duplication, the department and water management districts
712 are authorized to implement a voluntary state programmatic
713 general permit for all dredge and fill activities impacting 3
714 acres or less of wetlands or other surface waters, including
715 navigable waters, subject to agreement with the United States
716 Army Corps of Engineers, if the general permit is at least as
717 protective of the environment and natural resources as existing
718 state law under this part and federal law under the Clean Water
719 Act and the Rivers and Harbors Act of 1899. ~~The department is~~
720 ~~directed to file with the Speaker of the House of~~
721 ~~Representatives and the President of the Senate a report~~
722 ~~proposing any required federal and state statutory changes that~~
723 ~~would be necessary to accomplish the directives listed in this~~



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724 ~~section and to coordinate with the Florida Congressional~~
725 ~~Delegation on any necessary changes to federal law to implement~~
726 ~~the directives.~~

727 (3) Nothing in this section shall be construed to preclude
728 the department from pursuing a series of regional general
729 permits for construction activities in wetlands or surface
730 waters or complete assumption of federal permitting programs
731 regulating the discharge of dredged or fill material pursuant to
732 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
733 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
734 Act of 1899, so long as the assumption encompasses all dredge
735 and fill activities in, on, or over jurisdictional wetlands or
736 waters, including navigable waters, within the state.

737 Section 13. Subsections (2) and (3), paragraph (a) of
738 subsection (4), and paragraph (a) of subsection (6) of section
739 373.41492, Florida Statutes, are amended to read:

740 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
741 mitigation for mining activities within the Miami-Dade County
742 Lake Belt.-

743 (2) To provide for the mitigation of wetland resources lost
744 to mining activities within the Miami-Dade County Lake Belt
745 Plan, effective October 1, 1999, a mitigation fee is imposed on
746 each ton of limerock and sand extracted by any person who
747 engages in the business of extracting limerock or sand from
748 within the Miami-Dade County Lake Belt Area and the east one-
749 half of sections 24 and 25 and all of sections 35 and 36,
750 Township 53 South, Range 39 East. The mitigation fee is imposed
751 for each ton of limerock and sand sold from within the
752 properties where the fee applies in raw, processed, or



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753 manufactured form, including, but not limited to, sized
754 aggregate, asphalt, cement, concrete, and other limerock and
755 concrete products. The mitigation fee imposed by this subsection
756 for each ton of limerock and sand sold shall be 12 cents per ton
757 beginning January 1, 2007; 18 cents per ton beginning January 1,
758 2008; 24 cents per ton beginning January 1, 2009; and 45 cents
759 per ton beginning close of business December 31, 2011. To pay
760 for seepage mitigation projects, including hydrological
761 structures, as authorized in an environmental resource permit
762 issued by the department for mining activities within the Miami-
763 Dade County Lake Belt Area, and to upgrade a water treatment
764 plant that treats water coming from the Northwest Wellfield in
765 Miami-Dade County, a water treatment plant upgrade fee is
766 imposed within the same Lake Belt Area subject to the mitigation
767 fee and upon the same kind of mined limerock and sand subject to
768 the mitigation fee. The water treatment plant upgrade fee
769 imposed by this subsection for each ton of limerock and sand
770 sold shall be 15 cents per ton beginning on January 1, 2007, and
771 the collection of this fee shall cease once the total amount of
772 proceeds collected for this fee reaches the amount of the actual
773 moneys necessary to design and construct the water treatment
774 plant upgrade, as determined in an open, public solicitation
775 process. Any limerock or sand that is used within the mine from
776 which the limerock or sand is extracted is exempt from the fees.
777 The amount of the mitigation fee and the water treatment plant
778 upgrade fee imposed under this section must be stated separately
779 on the invoice provided to the purchaser of the limerock or sand
780 product from the limerock or sand miner, or its subsidiary or
781 affiliate, for which the fee or fees apply. The limerock or sand



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782 miner, or its subsidiary or affiliate, who sells the limerock or
783 sand product shall collect the mitigation fee and the water
784 treatment plant upgrade fee and forward the proceeds of the fees
785 to the Department of Revenue on or before the 20th day of the
786 month following the calendar month in which the sale occurs. As
787 used in this section, the term "proceeds of the fee" means all
788 funds collected and received by the Department of Revenue under
789 this section, including interest and penalties on delinquent
790 fees. The amount deducted for administrative costs may not
791 exceed 3 percent of the total revenues collected under this
792 section and may equal only those administrative costs reasonably
793 attributable to the fees.

794 (3) The mitigation fee and the water treatment plant
795 upgrade fee imposed by this section must be reported to the
796 Department of Revenue. Payment of the mitigation and the water
797 treatment plant upgrade fees must be accompanied by a form
798 prescribed by the Department of Revenue. The proceeds of the
799 mitigation fee, less administrative costs, must be transferred
800 by the Department of Revenue to the South Florida Water
801 Management District and deposited into the Lake Belt Mitigation
802 Trust Fund. Beginning January 1, 2012, and ending December 31,
803 2017, or upon issuance of water quality certification by the
804 department for mining activities within Phase II of the Miami-
805 Dade County Lake Belt Plan, whichever occurs sooner, the
806 proceeds of the water treatment plant upgrade fee, less
807 administrative costs, must be transferred by the Department of
808 Revenue to the South Florida Water Management District and
809 deposited into the Lake Belt Mitigation Trust Fund. Beginning
810 January 1, 2018, the proceeds of the water treatment plant



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811 upgrade fee, less administrative costs, must be transferred by
812 the Department of Revenue to a trust fund established by Miami-
813 Dade County, for the sole purpose authorized by paragraph
814 (6) (a). ~~As used in this section, the term "proceeds of the fee"~~
815 ~~means all funds collected and received by the Department of~~
816 ~~Revenue under this section, including interest and penalties on~~
817 ~~delinquent fees. The amount deducted for administrative costs~~
818 ~~may not exceed 3 percent of the total revenues collected under~~
819 ~~this section and may equal only those administrative costs~~
820 ~~reasonably attributable to the fees.~~

821 (4) (a) The Department of Revenue shall administer, collect,
822 and enforce the mitigation and water treatment plant upgrade
823 fees authorized under this section in accordance with the
824 procedures used to administer, collect, and enforce the general
825 sales tax imposed under chapter 212. The provisions of chapter
826 212 with respect to the authority of the Department of Revenue
827 to audit and make assessments, the keeping of books and records,
828 and the interest and penalties imposed on delinquent fees apply
829 to this section. The fees may not be included in computing
830 estimated taxes under s. 212.11, and the dealer's credit for
831 collecting taxes or fees provided for in s. 212.12 does not
832 apply to the fees imposed by this section.

833 (6) (a) The proceeds of the mitigation fee must be used to
834 conduct mitigation activities that are appropriate to offset the
835 loss of the value and functions of wetlands as a result of
836 mining activities and must be used in a manner consistent with
837 the recommendations contained in the reports submitted to the
838 Legislature by the Miami-Dade County Lake Belt Plan
839 Implementation Committee and adopted under s. 373.4149. Such



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840 mitigation may include the purchase, enhancement, restoration,
841 and management of wetlands and uplands, the purchase of
842 mitigation credit from a permitted mitigation bank, and any
843 structural modifications to the existing drainage system to
844 enhance the hydrology of the Miami-Dade County Lake Belt Area.
845 Funds may also be used to reimburse other funding sources,
846 including the Save Our Rivers Land Acquisition Program, the
847 Internal Improvement Trust Fund, the South Florida Water
848 Management District, and Miami-Dade County, for the purchase of
849 lands that were acquired in areas appropriate for mitigation due
850 to rock mining and to reimburse governmental agencies that
851 exchanged land under s. 373.4149 for mitigation due to rock
852 mining. The proceeds of the water treatment plant upgrade fee
853 that are deposited into the Lake Belt Mitigation Trust Fund
854 shall be used solely to pay for seepage mitigation projects,
855 including groundwater or surface water management structures, as
856 authorized in an environmental resource permit issued by the
857 department for mining activities within the Miami-Dade County
858 Lake Belt Area. The proceeds of the water treatment plant
859 upgrade fee that are transferred to a trust fund established by
860 Miami-Dade County shall be used to upgrade a water treatment
861 plant that treats water coming from the Northwest Wellfield in
862 Miami-Dade County. As used in this section, the terms "upgrade a
863 water treatment plant" or "water treatment plant upgrade" means
864 those works necessary to treat or filter a surface water source
865 or supply or both.

866 Section 14. Present subsections (3), (4), and (5) of
867 section 373.441, Florida Statutes, are renumbered as subsections
868 (6), (7), and (8), respectively, and new subsections (3), (4),



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869 and (5) are added to that section, to read:

870 373.441 Role of counties, municipalities, and local
871 pollution control programs in permit processing; delegation.—

872 (3) A county having a population of 200,000 or more or a
873 municipality having a population of 100,000 or more that
874 implements a local pollution control program regulating all or a
875 portion of the wetlands or surface waters throughout its
876 geographic boundary must apply for delegation of state
877 environmental resource permitting authority on or before June 1,
878 2012. Any such county or municipality that fails to receive
879 delegation of all or a portion of permitting authority within
880 one year, or by June 1, 2013, may not require permits that in
881 part or in full are substantially similar to the requirements
882 needed to obtain an environmental resource permit. Any county or
883 municipality that has already received delegation prior to June
884 1, 2012 need not reapply.

885 (4) The department shall be responsible for all delegations
886 of the environmental resource permitting program to local
887 governments. The department must grant or deny any application
888 for delegation submitted by a county or municipality meeting the
889 criteria in section (3) within one year after receipt of said
890 application. In the event an application for delegation is
891 denied, any available legal challenge to said denial shall toll
892 the one year preemption deadline until resolution of the legal
893 challenge. Upon delegation to a qualified local government, the
894 department and water management district may not regulate the
895 activities subject to the delegation within that jurisdiction
896 unless regulation is required pursuant to the terms of the
897 delegation agreement.



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898 (5) This section does not prohibit or limit a local
899 government meeting the criteria in subsection (3) from
900 regulating wetlands or surface waters after June 1, 2012, if the
901 local government receives delegation of all or a portion of
902 state environmental resource permitting authority within one
903 year after application. In the event an application for
904 delegation is denied, any available legal challenge to said
905 denial shall toll the one year preemption deadline until
906 resolution of the legal challenge.

907 (6) Notwithstanding subsections (3), (4), and (5) above,
908 none of the provisions in this section shall apply to
909 environmental resource permitting or reclamation applications
910 for solid mineral mining and nothing in this section shall
911 prohibit the application of local government regulations to any
912 new solid mineral mine, or to any proposed addition to,
913 expansion of, or change to an existing solid mineral mine.

914 ~~(7)~~~~(3)~~ Delegation of authority shall be approved if the
915 local government meets the requirements set forth in rule 62-
916 344, Florida Administrative Code. This section does not require
917 a local government to seek delegation of the environmental
918 resource permit program.

919 ~~(8)~~~~(4)~~ This section does not affect or modify land
920 development regulations adopted by a local government to
921 implement its comprehensive plan pursuant to chapter 163.

922 ~~(9)~~~~(5)~~ The department shall review environmental resource
923 permit applications for electrical distribution and transmission
924 lines and other facilities related to the production,
925 transmission, and distribution of electricity which are not
926 certified under ss. 403.52-403.5365, the Florida Electric



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927 Transmission Line Siting Act, regulated under this part.

928 Section 15. Section 376.30715, Florida Statutes, is amended
929 to read:

930 376.30715 Innocent victim petroleum storage system
931 restoration.—A contaminated site acquired by the current owner
932 prior to July 1, 1990, which has ceased operating as a petroleum
933 storage or retail business prior to January 1, 1985, is eligible
934 for financial assistance pursuant to s. 376.305(6),
935 notwithstanding s. 376.305(6) (a). For purposes of this section,
936 the term “acquired” means the acquisition of title to the
937 property; however, a subsequent transfer of the property to a
938 spouse or child of the owner, a surviving spouse or child of the
939 owner in trust or free of trust, ~~or~~ a revocable trust created
940 for the benefit of the settlor, or a corporate entity created by
941 the owner to hold title to the site does not disqualify the site
942 from financial assistance pursuant to s. 376.305(6) and
943 applicants previously denied coverage may reapply. Eligible
944 sites shall be ranked in accordance with s. 376.3071(5).

945 Section 16. Paragraph (u) is added to subsection (24) of
946 section 380.06, Florida Statutes, to read:

947 380.06 Developments of regional impact.—

948 (24) STATUTORY EXEMPTIONS.—

949 (u) Any proposed solid mineral mine and any proposed
950 addition to, expansion of, or change to an existing solid
951 mineral mine is exempt from the provisions of this section.
952 Proposed changes to any previously approved solid mineral mine
953 development-of-regional-impact development orders having vested
954 rights is not subject to further review or approval as a
955 development of regional impact or notice of proposed change



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956 review or approval pursuant to subsection (19), except for those
957 applications pending as of July 1, 2011, which shall be governed
958 by s. 380.115(2). Notwithstanding the foregoing, however,
959 pursuant to s. 380.115(1), previously approved solid mineral
960 mine development-of-regional-impact development orders shall
961 continue to enjoy vested rights and continue to be effective
962 unless rescinded by the developer. All local government
963 regulations of proposed solid mineral mines shall be applicable
964 to any new solid mineral mine or to any proposed addition to,
965 expansion of, or change to an existing solid mineral mine.
966

967 If a use is exempt from review as a development of regional
968 impact under paragraphs (a)-(s), but will be part of a larger
969 project that is subject to review as a development of regional
970 impact, the impact of the exempt use must be included in the
971 review of the larger project, unless such exempt use involves a
972 development of regional impact that includes a landowner,
973 tenant, or user that has entered into a funding agreement with
974 the Office of Tourism, Trade, and Economic Development under the
975 Innovation Incentive Program and the agreement contemplates a
976 state award of at least \$50 million.

977 Section 17. Subsection (2) of section 403.1838, Florida
978 Statutes, is amended to read:

979 403.1838 Small Community Sewer Construction Assistance
980 Act.—

981 (2) The department shall use funds specifically
982 appropriated to award grants under this section to assist
983 financially disadvantaged small communities with their needs for
984 adequate sewer facilities. For purposes of this section, the



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985 term "financially disadvantaged small community" means a
986 municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer
987 ~~less~~, according to the latest decennial census or ~~and~~ a per
988 capita annual income less than the state per capita annual
989 income as determined by the United States Department of
990 Commerce.

991 Section 18. Subsection (1) of section 380.0657, Florida
992 Statutes, is amended to read:

993 380.0657 Expedited permitting process for economic
994 development projects.—

995 (1) The Department of Environmental Protection and, as
996 appropriate, the water management districts created under
997 chapter 373 shall adopt programs to expedite the processing of
998 wetland resource and environmental resource permits for economic
999 development projects that have been identified by a municipality
1000 or county as meeting the definition of target industry
1001 businesses under s. 288.106, or any inland multimodal facility,
1002 receiving or sending cargo to or from Florida ports, with the
1003 exception of those projects requiring approval by the Board of
1004 Trustees of the Internal Improvement Trust Fund.

1005 Section 19. Subsection (11) of section 403.061, Florida
1006 Statutes, is amended to read:

1007 403.061 Department; powers and duties.—The department shall
1008 have the power and the duty to control and prohibit pollution of
1009 air and water in accordance with the law and rules adopted and
1010 promulgated by it and, for this purpose, to:

1011 (11) Establish ambient air quality and water quality
1012 standards for the state as a whole or for any part thereof, and
1013 also standards for the abatement of excessive and unnecessary



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1014 noise. The department is authorized to establish reasonable
1015 zones of mixing for discharges into waters. For existing
1016 installations as defined by rule 62-520.200(10), Florida
1017 Administrative Code, effective July 12, 2009, zones of discharge
1018 to groundwater are authorized to a facility or owner's property
1019 boundary and extending to the base of the uppermost aquifer or a
1020 specifically designated aquifer or aquifers. Exceedances of
1021 primary and secondary groundwater standards that occur within a
1022 zone of discharge shall not create liability pursuant to this
1023 chapter or chapter 376 for site clean-up, nor shall exceedances
1024 of soil cleanup target levels be a basis for enforcement or site
1025 clean-up.

1026 (a) When a receiving body of water fails to meet a water
1027 quality standard for pollutants set forth in department rules, a
1028 steam electric generating plant discharge of pollutants that is
1029 existing or licensed under this chapter on July 1, 1984, may
1030 nevertheless be granted a mixing zone, provided that:

1031 1. The standard would not be met in the water body in the
1032 absence of the discharge;

1033 2. The discharge is in compliance with all applicable
1034 technology-based effluent limitations;

1035 3. The discharge does not cause a measurable increase in
1036 the degree of noncompliance with the standard at the boundary of
1037 the mixing zone; and

1038 4. The discharge otherwise complies with the mixing zone
1039 provisions specified in department rules.

1040 (b) No mixing zone for point source discharges shall be
1041 permitted in Outstanding Florida Waters except for:

1042 1. Sources that have received permits from the department



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1043 prior to April 1, 1982, or the date of designation, whichever is
1044 later;

1045 2. Blowdown from new power plants certified pursuant to the
1046 Florida Electrical Power Plant Siting Act;

1047 3. Discharges of water necessary for water management
1048 purposes which have been approved by the governing board of a
1049 water management district and, if required by law, by the
1050 secretary; and

1051 4. The discharge of demineralization concentrate which has
1052 been determined permissible under s. 403.0882 and which meets
1053 the specific provisions of s. 403.0882(4)(a) and (b), if the
1054 proposed discharge is clearly in the public interest.

1055 (c) The department, by rule, shall establish water quality
1056 criteria for wetlands which criteria give appropriate
1057 recognition to the water quality of such wetlands in their
1058 natural state.

1059
1060 Nothing in this act shall be construed to invalidate any
1061 existing department rule relating to mixing zones. The
1062 department shall cooperate with the Department of Highway Safety
1063 and Motor Vehicles in the development of regulations required by
1064 s. 316.272(1). The department shall implement such programs in
1065 conjunction with its other powers and duties and shall place
1066 special emphasis on reducing and eliminating contamination that
1067 presents a threat to humans, animals or plants, or to the
1068 environment.

1069 Section 20. Subsection (7) of section 403.087, Florida
1070 Statutes, is amended to read:

1071 403.087 Permits; general issuance; denial; revocation;



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1072 prohibition; penalty.-

1073 (7) A permit issued pursuant to this section shall not
1074 become a vested right in the permittee. The department may
1075 revoke any permit issued by it if it finds that the permitholder
1076 has:

1077 (a) ~~Has~~ Submitted false or inaccurate information in the
1078 his or her application for such permit;

1079 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~
1080 regulations, or permit conditions;

1081 (c) ~~Has~~ Failed to submit operational reports or other
1082 information required by department rule which directly relate to
1083 such permit and has refused to correct or cure such violations
1084 when requested to do so or regulation; or

1085 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the
1086 facility authorized by such permit.

1087 Section 21. Section 403.0874, Florida Statutes, is created
1088 to read:

1089 403.0874 Incentive-based permitting program.-

1090 (1) SHORT TITLE.-This section may be cited as the "Florida
1091 Incentive-based Permitting Act."

1092 (2) FINDINGS AND INTENT.-The Legislature finds and declares
1093 that the department should consider compliance history when
1094 deciding whether to issue, renew, amend, or modify a permit by
1095 evaluating an applicant's site-specific and program-specific
1096 relevant aggregate compliance history. Persons having a history
1097 of complying with applicable permits or state environmental laws
1098 and rules are eligible for permitting benefits, including, but
1099 not limited to, expedited permit application reviews, longer
1100 duration permit periods, decreased announced compliance



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1101 inspections, and other similar regulatory and compliance
1102 incentives to encourage and reward such persons for their
1103 environmental performance.

1104 (3) APPLICABILITY.—

1105 (a) This section applies to all persons and regulated
1106 activities that are subject to the permitting requirements of
1107 chapter 161, chapter 373, or this chapter, and all other
1108 applicable state or federal laws that govern activities for the
1109 purpose of protecting the environment or the public health from
1110 pollution or contamination.

1111 (b) Notwithstanding paragraph (a), this section does not
1112 apply to certain permit actions or environmental permitting laws
1113 such as:

1114 1. Environmental permitting or authorization laws that
1115 regulate activities for the purpose of zoning, growth
1116 management, or land use; or

1117 2. Any federal law or program delegated or assumed by the
1118 state to the extent that implementation of this section, or any
1119 part of this section, would jeopardize the ability of the state
1120 to retain such delegation or assumption.

1121 (c) As used in this section, a the term "regulated
1122 activity" means any activity, including, but not limited to, the
1123 construction or operation of a facility, installation, system,
1124 or project, for which a permit, certification, or authorization
1125 is required under chapter 161, chapter 373, or this chapter.

1126 (4) COMPLIANCE HISTORY.—The compliance history period shall
1127 be the 10 years before the date any permit or renewal
1128 application is received by the department. Any person is
1129 entitled to the incentives under paragraph (5) (a) if:



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1130 (a)1. The applicant has conducted the regulated activity at
1131 the same site for which the permit or renewal is sought for at
1132 least 8 of the 10 years before the date the permit application
1133 is received by the department; or

1134 2. The applicant has conducted the same regulated activity
1135 at a different site within the state for at least 8 of the 10
1136 years before the date the permit or renewal application is
1137 received by the department; and

1138 (b) In the 10 years before the date the permit or renewal
1139 application is received by the department or water management
1140 district, the applicant has not been subject to a final
1141 administrative order or civil judgment or criminal conviction
1142 whereby an administrative law judge or civil or criminal court
1143 found the applicant violated the applicable law or rule, and has
1144 not been the subject of an administrative settlement or consent
1145 orders, whether formal or informal, that established a violation
1146 of an applicable law or rule; and

1147 (c) The applicant can demonstrate during a 10-year
1148 compliance history period the implementation of activities or
1149 practices that resulted in:

1150 1. Reductions in actual or permitted discharges or
1151 emissions;

1152 2. Reductions in the impacts of regulated activities on
1153 public lands or natural resources; and

1154 3. Implementation of voluntary environmental performance
1155 programs, such as environmental management systems.

1156 (5) COMPLIANCE INCENTIVES.—

1157 (a) An applicant shall request all applicable incentives at
1158 the time of application submittal. Unless otherwise prohibited



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1159 by state or federal law, rule, or regulation, and if the
1160 applicant meets all other applicable criteria for the issuance
1161 of a permit or authorization, an applicant is entitled to the
1162 following incentives:

1163 1. Expedited reviews on permit actions, including, but not
1164 limited to, initial permit issuance, renewal, modification, and
1165 transfer, if applicable. Expedited review means, at a minimum,
1166 that the initial request for additional information regarding a
1167 permit application shall be issued no later than 30 days after
1168 the application is filed, and final agency action shall be taken
1169 no later than 60 days after the application is deemed complete;

1170 2. Priority review of permit application;

1171 3. Reduced number of routine compliance inspections;

1172 4. No more than two requests for additional information
1173 under s. 120.60; and

1174 5. Longer permit period durations.

1175 (6) RULEMAKING.—The department may adopt additional
1176 incentives by rule. Such incentives shall be based on, and
1177 proportional to, actions taken by the applicant to reduce the
1178 applicant's impacts on human health and the environment beyond
1179 those actions required by law. The department's rules adopted
1180 under this section are binding on the water management districts
1181 and any local government that has been delegated or assumed a
1182 regulatory program to which this section applies.

1183 (7) SAVINGS PROVISION.—This section is not intended to
1184 affect an applicant's responsibility to provide reasonable
1185 assurance of compliance with applicable statutes and rules as a
1186 condition precedent to issuance of a permit, nor to limit
1187 factors the department, a water management district, or a



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1188 delegated program can consider in evaluating a permit
1189 application under existing law.

1190 Section 22. Paragraph (f) of subsection (1) of section
1191 403.7045, Florida Statutes, is amended to read:

1192 403.7045 Application of act and integration with other
1193 acts.—

1194 (1) The following wastes or activities shall not be
1195 regulated pursuant to this act:

1196 (f) Industrial byproducts, if:

1197 1. A majority of the industrial byproducts are demonstrated
1198 to be sold, used, or reused within 1 year.

1199 2. The industrial byproducts are not discharged, deposited,
1200 injected, dumped, spilled, leaked, or placed upon any land or
1201 water so that such industrial byproducts, or any constituent
1202 thereof, may enter other lands or be emitted into the air or
1203 discharged into any waters, including groundwaters, or otherwise
1204 enter the environment such that a threat of contamination in
1205 excess of applicable department standards and criteria or a
1206 significant threat to public health is caused.

1207 3. The industrial byproducts are not hazardous wastes as defined
1208 under s. 403.703 and rules adopted under this section.

1209

1210 Sludge from an industrial waste treatment works that meets the
1211 exemption requirements of this paragraph is not considered to be
1212 solid waste as defined in s. 403.703(32).

1213 Section 23. Subsections (2) and (3) of section 403.707,
1214 Florida Statutes, are amended to read:

1215 403.707 Permits.—

1216 (2) Except as provided in s. 403.722(6), a permit under



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1217 this section is not required for the following, ~~if the activity~~
1218 ~~does not create a public nuisance or any condition adversely~~
1219 ~~affecting the environment or public health and does not violate~~
1220 ~~other state or local laws, ordinances, rules, regulations, or~~
1221 ~~orders:~~

1222 (a) Disposal by persons of solid waste resulting from their
1223 own activities on their own property, if such waste is ordinary
1224 household waste from their residential property or is rocks,
1225 soils, trees, tree remains, and other vegetative matter that
1226 normally result from land development operations. Disposal of
1227 materials that could create a public nuisance or adversely
1228 affect the environment or public health, such as white goods;
1229 automotive materials, such as batteries and tires; petroleum
1230 products; pesticides; solvents; or hazardous substances, is not
1231 covered under this exemption.

1232 (b) Storage in containers by persons of solid waste
1233 resulting from their own activities on their property, leased or
1234 rented property, or property subject to a homeowners or
1235 maintenance association for which the person contributes
1236 association assessments, if the solid waste in such containers
1237 is collected at least once a week.

1238 (c) Disposal by persons of solid waste resulting from their
1239 own activities on their property, if the environmental effects
1240 of such disposal on groundwater and surface waters are:

1241 1. Addressed or authorized by a site certification order
1242 issued under part II or a permit issued by the department under
1243 this chapter or rules adopted pursuant to this chapter; or

1244 2. Addressed or authorized by, or exempted from the
1245 requirement to obtain, a groundwater monitoring plan approved by



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1246 the department. If the facility has a permit authorizing
1247 disposal activity, new areas where solid waste is disposed of
1248 that are being monitored by an existing or modified ground water
1249 monitoring plan are not required to be specifically authorized
1250 by permit or certification.

1251 (d) Disposal by persons of solid waste resulting from their
1252 own activities on their own property, if such disposal occurred
1253 prior to October 1, 1988.

1254 (e) Disposal of solid waste resulting from normal farming
1255 operations as defined by department rule. Polyethylene
1256 agricultural plastic, damaged, nonsalvageable, untreated wood
1257 pallets, and packing material that cannot be feasibly recycled,
1258 which are used in connection with agricultural operations
1259 related to the growing, harvesting, or maintenance of crops, may
1260 be disposed of by open burning if a public nuisance or any
1261 condition adversely affecting the environment or the public
1262 health is not created by the open burning and state or federal
1263 ambient air quality standards are not violated.

1264 (f) The use of clean debris as fill material in any area.
1265 However, this paragraph does not exempt any person from
1266 obtaining any other required permits, and does not affect a
1267 person's responsibility to dispose of clean debris appropriately
1268 if it is not to be used as fill material.

1269 (g) Compost operations that produce less than 50 cubic
1270 yards of compost per year when the compost produced is used on
1271 the property where the compost operation is located.

1272 (3) All applicable provisions of ss. 403.087 and 403.088,
1273 relating to permits, apply to the control of solid waste
1274 management facilities. Additionally, any permit issued to a



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1275 solid waste management facility that is designed with a leachate
1276 control system meeting department requirements shall be for a
1277 term of 20 years, or should the applicant request, a lesser
1278 number of years. Existing permit fees for qualifying solid waste
1279 management facilities shall be prorated to the permit term
1280 authorized by this section. This provision applies to all
1281 qualifying solid waste management facilities that apply for an
1282 operating or construction permit, or renew an existing operating
1283 or construction permit, on or after July 1, 2012.

1284 Section 24. Subsection (12) is added to section 403.814,
1285 Florida Statutes, to read:

1286 403.814 General permits; delegation.—

1287 (12) A general permit shall be granted for the
1288 construction, alteration, and maintenance of a surface water
1289 management system serving a total project area of up to 10
1290 acres. The construction of such a system may proceed without any
1291 agency action by the department or water management district if:

1292 (a) The total project area is less than 10 acres;

1293 (b) The total project area involves less than 2 acres of
1294 impervious surface;

1295 (c) No activities will impact wetlands or other surface
1296 waters;

1297 (d) No activities are conducted in, on, or over wetlands or
1298 other surface waters;

1299 (e) Drainage facilities will not include pipes having
1300 diameters greater than 24 inches, or the hydraulic equivalent,
1301 and will not use pumps in any manner;

1302 (f) The project is not part of a larger common plan of
1303 development or sale.



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- 1304 (g) The project does not:
1305 1. Cause adverse water quantity or flooding impacts to
1306 receiving water and adjacent lands;
1307 2. Cause adverse impacts to existing surface water storage
1308 and conveyance capabilities;
1309 3. Cause a violation of state water quality standards; and
1310 4. Cause an adverse impact to the maintenance of surface or
1311 ground water levels or surface water flows established pursuant
1312 to s. 373.042 or a work of the district established pursuant to
1313 s. 373.086; and

1314 (h) The surface water management system design plans must
1315 be signed and sealed by a Florida registered professional who
1316 shall attest that the system will perform and function as
1317 proposed and has been designed in accordance with appropriate,
1318 generally accepted performance standards and scientific
1319 principles.

1320 Section 25. Paragraph (a) of subsection (3) and subsections
1321 (4), (5), (10), (11), (14), (15), and (18) of section 403.973,
1322 Florida Statutes, are amended to read:

1323 403.973 Expedited permitting; amendments to comprehensive
1324 plans.—

1325 (3) (a) The secretary shall direct the creation of regional
1326 permit action teams for the purpose of expediting review of
1327 permit applications and local comprehensive plan amendments
1328 submitted by:

- 1329 1. Businesses creating at least 50 jobs or a commercial or
1330 industrial development project that will be occupied by
1331 businesses that would individually or collectively create at
1332 least 50 jobs; or



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1333 2. Businesses creating at least 25 jobs if the project is
1334 located in an enterprise zone, or in a county having a
1335 population of fewer than 75,000 or in a county having a
1336 population of fewer than 125,000 which is contiguous to a county
1337 having a population of fewer than 75,000, as determined by the
1338 most recent decennial census, residing in incorporated and
1339 unincorporated areas of the county.

1340 (4) The regional teams shall be established through the
1341 execution of a project-specific memoranda of agreement developed
1342 and executed by the applicant and the secretary, with input
1343 solicited from ~~the office and~~ the respective heads of the
1344 Department of Community Affairs, the Department of
1345 Transportation and its district offices, the Department of
1346 Agriculture and Consumer Services, the Fish and Wildlife
1347 Conservation Commission, appropriate regional planning councils,
1348 appropriate water management districts, and voluntarily
1349 participating municipalities and counties. The memoranda of
1350 agreement should also accommodate participation in this
1351 expedited process by other local governments and federal
1352 agencies as circumstances warrant.

1353 (5) In order to facilitate local government's option to
1354 participate in this expedited review process, the secretary
1355 shall, in cooperation with local governments and participating
1356 state agencies, create a standard form memorandum of agreement.
1357 The standard form of the memorandum of agreement shall be used
1358 only if the local government participates in the expedited
1359 review process. In the absence of local government
1360 participation, only the project-specific memorandum of agreement
1361 executed pursuant to subsection (4) applies. A local government



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1362 shall hold a duly noticed public workshop to review and explain
1363 to the public the expedited permitting process and the terms and
1364 conditions of the standard form memorandum of agreement.

1365 (10) The memoranda of agreement may provide for the waiver
1366 or modification of procedural rules prescribing forms, fees,
1367 procedures, or time limits for the review or processing of
1368 permit applications under the jurisdiction of those agencies
1369 that are members of the regional permit action team ~~party to the~~
1370 ~~memoranda of agreement~~. Notwithstanding any other provision of
1371 law to the contrary, a memorandum of agreement must to the
1372 extent feasible provide for proceedings and hearings otherwise
1373 held separately ~~by the parties to the memorandum of agreement~~ to
1374 be combined into one proceeding or held jointly and at one
1375 location. Such waivers or modifications shall not be available
1376 for permit applications governed by federally delegated or
1377 approved permitting programs, the requirements of which would
1378 prohibit, or be inconsistent with, such a waiver or
1379 modification.

1380 (11) The ~~standard form for~~ memoranda of agreement shall
1381 include guidelines to be used in working with state, regional,
1382 and local permitting authorities. Guidelines may include, but
1383 are not limited to, the following:

1384 (a) A central contact point for filing permit applications
1385 and local comprehensive plan amendments and for obtaining
1386 information on permit and local comprehensive plan amendment
1387 requirements;

1388 (b) Identification of the individual or individuals within
1389 each respective agency who will be responsible for processing
1390 the expedited permit application or local comprehensive plan



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1391 amendment for that agency;

1392 (c) A mandatory preapplication review process to reduce
1393 permitting conflicts by providing guidance to applicants
1394 regarding the permits needed from each agency and governmental
1395 entity, site planning and development, site suitability and
1396 limitations, facility design, and steps the applicant can take
1397 to ensure expeditious permit application and local comprehensive
1398 plan amendment review. As a part of this process, the first
1399 interagency meeting to discuss a project shall be held within 14
1400 days after the secretary's determination that the project is
1401 eligible for expedited review. Subsequent interagency meetings
1402 may be scheduled to accommodate the needs of participating local
1403 governments that are unable to meet public notice requirements
1404 for executing a memorandum of agreement within this timeframe.
1405 This accommodation may not exceed 45 days from the secretary's
1406 determination that the project is eligible for expedited review;

1407 (d) The preparation of a single coordinated project
1408 description form and checklist and an agreement by state and
1409 regional agencies to reduce the burden on an applicant to
1410 provide duplicate information to multiple agencies;

1411 (e) Establishment of a process for the adoption and review
1412 of any comprehensive plan amendment needed by any certified
1413 project within 90 days after the submission of an application
1414 for a comprehensive plan amendment. However, the memorandum of
1415 agreement may not prevent affected persons as defined in s.
1416 163.3184 from appealing or participating in this expedited plan
1417 amendment process and any review or appeals of decisions made
1418 under this paragraph; and

1419 (f) Additional incentives for an applicant who proposes a



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1420 project that provides a net ecosystem benefit.
1421 (14) (a) Challenges to state agency action in the expedited
1422 permitting process for projects processed under this section are
1423 subject to the summary hearing provisions of s. 120.574, except
1424 that the administrative law judge's decision, as provided in s.
1425 120.574(2) (f), shall be in the form of a recommended order and
1426 shall not constitute the final action of the state agency. In
1427 those proceedings where the action of only one agency of the
1428 state other than the Department of Environmental Protection is
1429 challenged, the agency of the state shall issue the final order
1430 within 45 working days after receipt of the administrative law
1431 judge's recommended order, and the recommended order shall
1432 inform the parties of their right to file exceptions or
1433 responses to the recommended order in accordance with the
1434 uniform rules of procedure pursuant to s. 120.54. In those
1435 proceedings where the actions of more than one agency of the
1436 state are challenged, the Governor shall issue the final order
1437 within 45 working days after receipt of the administrative law
1438 judge's recommended order, and the recommended order shall
1439 inform the parties of their right to file exceptions or
1440 responses to the recommended order in accordance with the
1441 uniform rules of procedure pursuant to s. 120.54. For This
1442 ~~paragraph does not apply to~~ the issuance of department licenses
1443 required under any federally delegated or approved permit
1444 program. In such instances, the department, and not the
1445 Governor, shall enter the final order. The participating
1446 agencies of the state may opt at the preliminary hearing
1447 conference to allow the administrative law judge's decision to
1448 constitute the final agency action. If a participating local



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1449 government agrees to participate in the summary hearing
1450 provisions of s. 120.574 for purposes of review of local
1451 government comprehensive plan amendments, s. 163.3184(9) and
1452 (10) apply.

1453 (b) Projects identified in paragraph (3) (f) or challenges
1454 to state agency action in the expedited permitting process for
1455 establishment of a state-of-the-art biomedical research
1456 institution and campus in this state by the grantee under s.
1457 288.955 are subject to the same requirements as challenges
1458 brought under paragraph (a), except that, notwithstanding s.
1459 120.574, summary proceedings must be conducted within 30 days
1460 after a party files the motion for summary hearing, regardless
1461 of whether the parties agree to the summary proceeding.

1462 (15) The office, working with the agencies providing
1463 cooperative assistance and input regarding the memoranda of
1464 agreement, shall review sites proposed for the location of
1465 facilities that the office has certified to be eligible for the
1466 Innovation Incentive Program under s. 288.1089. Within 20 days
1467 after the request for the review by the office, the agencies
1468 shall provide to the office a statement as to each site's
1469 necessary permits under local, state, and federal law and an
1470 identification of significant permitting issues, which if
1471 unresolved, may result in the denial of an agency permit or
1472 approval or any significant delay caused by the permitting
1473 process.

1474 (18) The office, working with the Rural Economic
1475 Development Initiative ~~and the agencies participating in the~~
1476 ~~memoranda of agreement~~, shall provide technical assistance in
1477 preparing permit applications and local comprehensive plan



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1478 amendments for counties having a population of fewer than 75,000
1479 residents, or counties having fewer than 125,000 residents which
1480 are contiguous to counties having fewer than 75,000 residents.
1481 Additional assistance may include, but not be limited to,
1482 guidance in land development regulations and permitting
1483 processes, working cooperatively with state, regional, and local
1484 entities to identify areas within these counties which may be
1485 suitable or adaptable for preclearance review of specified types
1486 of land uses and other activities requiring permits.

1487 Section 26. Subsection (5) is added to section 526.203,
1488 Florida Statutes, to read:

1489 526.203 Renewable fuel standard.—

1490 (5) This section does not prohibit the sale of unblended
1491 fuels for the uses exempted under subsection (3).

1492 Section 27. The installation of fuel tank upgrades to
1493 secondary containment systems shall be completed by the
1494 deadlines specified in rule 62-761.510, Florida Administrative
1495 Code, Table UST. However, notwithstanding any agreements to the
1496 contrary, any fuel service station that changed ownership
1497 interest through a bona fide sale of the property between
1498 January 1, 2009, and December 31, 2009, is not required to
1499 complete the upgrades described in Rule 62-761.510, Florida
1500 Administrative Code, Table UST, until December 31, 2012.

1501 Section 28. Subsection (18) of section 373.414, Florida
1502 Statutes, is amended to read:

1503 373.414 Additional criteria for activities in surface
1504 waters and wetlands.—

1505 (18) The department in coordination with ~~and~~ each water
1506 management district responsible for implementation of the



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1507 environmental resource permitting program shall develop a
1508 uniform mitigation assessment method for wetlands and other
1509 surface waters. ~~The department shall adopt the uniform~~
1510 ~~mitigation assessment method by rule no later than July 31,~~
1511 ~~2002.~~ The rule shall provide an exclusive, uniform and
1512 consistent process for determining the amount of mitigation
1513 required to offset impacts to wetlands and other surface waters,
1514 and, once effective, shall supersede all rules, ordinances, and
1515 variance procedures from ordinances that determine the amount of
1516 mitigation needed to offset such impacts. Except when evaluating
1517 mitigation bank applications, which must meet the criteria of
1518 373.4136(1), the rule shall be applied only after determining
1519 that the mitigation is appropriate to offset the values and
1520 functions of wetlands and surface waters to be adversely
1521 impacted by the proposed activity. Once the department adopts
1522 the uniform mitigation assessment method by rule, the uniform
1523 mitigation assessment method shall be binding on the department,
1524 the water management districts, local governments, and any other
1525 governmental agencies and shall be the sole means to determine
1526 the amount of mitigation needed to offset adverse impacts to
1527 wetlands and other surface waters and to award and deduct
1528 mitigation bank credits. A water management district and any
1529 other governmental agency subject to chapter 120 may apply the
1530 uniform mitigation assessment method without the need to adopt
1531 it pursuant to s. 120.54. It shall be a goal of the department
1532 and water management districts that the uniform mitigation
1533 assessment method developed be practicable for use within the
1534 timeframes provided in the permitting process and result in a
1535 consistent process for determining mitigation requirements. It



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1536 shall be recognized that any such method shall require the
1537 application of reasonable scientific judgment. The uniform
1538 mitigation assessment method must determine the value of
1539 functions provided by wetlands and other surface waters
1540 considering the current conditions of these areas, utilization
1541 by fish and wildlife, location, uniqueness, and hydrologic
1542 connection, and, when applied to mitigation banks, the factors
1543 ~~listed in s. 373.4136(4)~~. The uniform mitigation assessment
1544 method shall also account for the expected time-lag associated
1545 with offsetting impacts and the degree of risk associated with
1546 the proposed mitigation. The uniform mitigation assessment
1547 method shall account for different ecological communities in
1548 different areas of the state. In developing the uniform
1549 mitigation assessment method, the department and water
1550 management districts shall consult with approved local programs
1551 under s. 403.182 which have an established mitigation program
1552 for wetlands or other surface waters. The department and water
1553 management districts shall consider the recommendations
1554 submitted by such approved local programs, including any
1555 recommendations relating to the adoption by the department and
1556 water management districts of any uniform mitigation methodology
1557 that has been adopted and used by an approved local program in
1558 its established mitigation program for wetlands or other surface
1559 waters. Environmental resource permitting rules may establish
1560 categories of permits or thresholds for minor impacts under
1561 which the use of the uniform mitigation assessment method will
1562 not be required. The application of the uniform mitigation
1563 assessment method is not subject to s. 70.001. In the event the
1564 rule establishing the uniform mitigation assessment method is



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1565 deemed to be invalid, the applicable rules related to
1566 establishing needed mitigation in existence prior to the
1567 adoption of the uniform mitigation assessment method, including
1568 those adopted by a county which is an approved local program
1569 under s. 403.182, and the method described in paragraph (b) for
1570 existing mitigation banks, shall be authorized for use by the
1571 department, water management districts, local governments, and
1572 other state agencies.

1573 (a) In developing the uniform mitigation assessment method,
1574 the department shall seek input from the United States Army
1575 Corps of Engineers in order to promote consistency in the
1576 mitigation assessment methods used by the state and federal
1577 permitting programs.

1578 (b) An entity which has received a mitigation bank permit
1579 prior to the adoption of the uniform mitigation assessment
1580 method shall have impact sites assessed, for the purpose of
1581 deducting bank credits, using the credit assessment method,
1582 including any functional assessment methodology, which was in
1583 place when the bank was permitted; unless the entity elects to
1584 have its credits redetermined, and thereafter have its credits
1585 deducted, using the uniform mitigation assessment method.

1586 (c) The department shall ensure statewide coordination and
1587 consistency in the interpretation and application of the uniform
1588 mitigation assessment method rule by providing programmatic
1589 training and guidance to staff of the department, water
1590 management districts, and local governments. To ensure that the
1591 uniform mitigation assessment method rule is interpreted and
1592 applied uniformly, the department's interpretation, guidance,
1593 and approach to applying the uniform mitigation assessment



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1594 method rule shall govern.

1595 (d) Applicants shall submit the information needed to
1596 perform the assessment required under the uniform mitigation
1597 assessment method rule, and may submit the qualitative
1598 characterization and quantitative assessment for each assessment
1599 area specified by the rule. The reviewing agency shall review
1600 that information and notify the applicant of any inadequacy in
1601 the information or application of the assessment method.

1602 (e) When conducting qualitative characterization of
1603 artificial wetlands and other surface waters, such as borrow
1604 pits, ditches, and canals under the uniform mitigation
1605 assessment method rule, the native community type to which it is
1606 most analogous in function shall be used as a reference. For
1607 wetlands or other surface waters that have been altered from
1608 their native community type, the historic community type at that
1609 location shall be used as a reference, unless the alteration has
1610 been of such a degree and extent that a different native
1611 community type is now present and self sustaining.

1612 (f) When conducting qualitative characterization of upland
1613 mitigation assessment areas, the characterization shall include
1614 functions that the upland assessment area provides to the fish
1615 and wildlife of the associated wetland or other surface waters.
1616 These functions shall be considered and accounted for when
1617 scoring the upland assessment area for preservation,
1618 enhancement, or restoration.

1619 (g) Preservation mitigation, as used in the uniform
1620 mitigation assessment method, means the protection of important
1621 wetland, other surface water or upland ecosystems (predominantly
1622 in their existing condition and absent restoration, creation or



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1623 enhancement) from adverse impacts by placing a conservation
1624 easement or other comparable land use restriction over the
1625 property or by donation of fee simple interest in the property.
1626 Preservation may include a management plan for perpetual
1627 protection of the area. The preservation adjustment factor set
1628 forth in rule 62-345.500(3), Florida Administrative Code, shall
1629 only apply to preservation mitigation.

1630 (h) When assessing a preservation mitigation assessment
1631 area under the uniform mitigation assessment method the
1632 following shall apply:

1633 1. "Without preservation" shall consider the reasonably
1634 anticipated loss of functions and values provided by the
1635 assessment area, assuming the area is not preserved.

1636 2. Each of the considerations of the preservation
1637 adjustment factor specified in Rule 62-345.500(3) (a), Florida
1638 Administrative Code shall be equally weighted and scored on a
1639 scale from 0 (no value) to 0.2 (optimal value). In addition, the
1640 minimum preservation adjustment factor shall be 0.2.

1641 (i) The location and landscape support scores, pursuant to
1642 rule 62-345.500, Florida Administrative Code, may change in the
1643 "with mitigation" or "with impact" condition in both upland and
1644 wetland assessment areas, regardless of the initial community
1645 structure or water environment scores.

1646 (j) When a mitigation plan for creation, restoration, or
1647 enhancement includes a preservation mechanism (such as a
1648 conservation easement), the "with mitigation" assessment of that
1649 creation, restoration, or enhancement shall consider, and the
1650 scores shall reflect, the benefits of that preservation
1651 mechanism, and the benefits of that preservation mechanism shall



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1652 not be scored separately.

1653 (k) Any entity holding a mitigation bank permit that was
1654 evaluated under the uniform mitigation assessment method prior
1655 to the effective date of paragraphs (c)-(j), may submit a permit
1656 modification request to the relevant permitting agency to have
1657 such mitigation bank reassessed pursuant to the provisions set
1658 forth in this section, and the relevant permitting agency shall
1659 reassess such mitigation bank, if such request is filed with
1660 that agency no later than September 30, 2011.

1661 Section 29. Subsection (4) of section 373.4136, Florida
1662 Statutes, is amended to read:

1663 373.4136 Establishment and operation of mitigation banks.-

1664 (4) MITIGATION CREDITS.—After evaluating the information
1665 submitted by the applicant for a mitigation bank permit and
1666 assessing the proposed mitigation bank pursuant to the criteria
1667 in this section, the department or water management district
1668 shall award a number of mitigation credits to a proposed
1669 mitigation bank or phase of such mitigation bank. An entity
1670 establishing and operating a mitigation bank may apply to modify
1671 the mitigation bank permit to seek the award of additional
1672 mitigation credits if the mitigation bank results in an
1673 additional increase in ecological value over the value
1674 contemplated at the time of the original permit issuance, or the
1675 most recent modification thereto involving the number of credits
1676 awarded. The number of credits awarded shall be based on the
1677 degree of improvement in ecological value expected to result
1678 from the establishment and operation of the mitigation bank as
1679 determined using the uniform mitigation assessment method
1680 adopted pursuant to s. 373.414(18). ~~a functional assessment~~



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1681 ~~methodology. In determining the degree of improvement in~~
1682 ~~ecological value, each of the following factors, at a minimum,~~
1683 ~~shall be evaluated:~~

1684 ~~(a) The extent to which target hydrologic regimes can be~~
1685 ~~achieved and maintained.~~

1686 ~~(b) The extent to which management activities promote~~
1687 ~~natural ecological conditions, such as natural fire patterns.~~

1688 ~~(c) The proximity of the mitigation bank to areas with~~
1689 ~~regionally significant ecological resources or habitats, such as~~
1690 ~~national or state parks, Outstanding National Resource Waters~~
1691 ~~and associated watersheds, Outstanding Florida Waters and~~
1692 ~~associated watersheds, and lands acquired through governmental~~
1693 ~~or nonprofit land acquisition programs for environmental~~
1694 ~~conservation; and the extent to which the mitigation bank~~
1695 ~~establishes corridors for fish, wildlife, or listed species to~~
1696 ~~those resources or habitats.~~

1697 ~~(d) The quality and quantity of wetland or upland~~
1698 ~~restoration, enhancement, preservation, or creation.~~

1699 ~~(e) The ecological and hydrological relationship between~~
1700 ~~wetlands and uplands in the mitigation bank.~~

1701 ~~(f) The extent to which the mitigation bank provides~~
1702 ~~habitat for fish and wildlife, especially habitat for species~~
1703 ~~listed as threatened, endangered, or of special concern, or~~
1704 ~~provides habitats that are unique for that mitigation service~~
1705 ~~area.~~

1706 ~~(g) The extent to which the lands that are to be preserved~~
1707 ~~are already protected by existing state, local, or federal~~
1708 ~~regulations or land use restrictions.~~

1709 ~~(h) The extent to which lands to be preserved would be~~



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1710 ~~adversely affected if they were not preserved.~~

1711 ~~(i) Any special designation or classification of the~~
1712 ~~affected waters and lands.~~

1713 Section 30. Section 218.075, Florida Statutes, is amended
1714 to read:

1715 218.075 Reduction or waiver of permit processing fees.—
1716 Notwithstanding any other provision of law, the Department of
1717 Environmental Protection and the water management districts
1718 shall reduce or waive permit processing fees for counties with a
1719 population of 50,000 or less on April 1, 1994, until such
1720 counties exceed a population of 75,000 and municipalities with a
1721 population of 25,000 or less, or an entity created by special
1722 act or local ordinance or interlocal agreement of such counties
1723 or municipalities or any county or municipality not included
1724 within a metropolitan statistical area. Fee reductions or
1725 waivers shall be approved on the basis of fiscal hardship or
1726 environmental need for a particular project or activity. The
1727 governing body must certify that the cost of the permit
1728 processing fee is a fiscal hardship due to one of the following
1729 factors:

1730 (1) Per capita taxable value is less than the statewide
1731 average for the current fiscal year;

1732 (2) Percentage of assessed property value that is exempt
1733 from ad valorem taxation is higher than the statewide average
1734 for the current fiscal year;

1735 (3) Any condition specified in s. 218.503(1) which results
1736 in the county or municipality being in a state of financial
1737 emergency;

1738 (4) Ad valorem operating millage rate for the current



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1739 fiscal year is greater than 8 mills; or

1740 (5) A financial condition that is documented in annual
1741 financial statements at the end of the current fiscal year and
1742 indicates an inability to pay the permit processing fee during
1743 that fiscal year. The permit applicant must be the governing
1744 body of a county or municipality or a third party under contract
1745 with a county or municipality or an entity created by special
1746 act or local ordinance or interlocal agreement and the project
1747 for which the fee reduction or waiver is sought must serve a
1748 public purpose. If a permit processing fee is reduced, the total
1749 fee shall not exceed \$100.

1750

1751 Section 31. This act shall take effect July 1, 2011.

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 Environmental Preservation and Conservation Committee

BILL: SB 1404

INTRODUCER: Senator Evers

SUBJECT: Environmental Permitting

DATE: March 27, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Pre-meeting
2.			CA	
3.			AG	
4.			BC	
5.				
6.				

I. Summary:

The bill creates, amends and redefines provisions relating to environmental permitting. It addresses development, construction, operating and building permits; permit application requirements and procedures, including waivers, variances, revocation and challenges; local government comprehensive plans and plan amendments; state programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, biofuel and renewable energy facilities and phosphate mining activities. The bill revises requirements for demonstrating injury in order to seek relief under the Environmental Protection Act and shifts the burden of persuasion and evidence to third parties in certain instances. Specifically the bill:

- Authorizes notice of the procedure to obtain an administrative hearing or judicial review to be available online;
- Shifts the burden of persuasion and evidence to third parties who wish to challenge an agency's decision for those challenges arising under chs. 373, 378 or 403, F.S;
- Shortens the time frame an agency has to approve or deny a completed application for a license from 90 to 60 days; allows an applicant to request his or her application be processed if he or she believes all legally required information has been provided;
- Directs local governments to include the construction and operation of bio-fuel processing and renewable energy facilities as a valid industrial, agricultural and silviculture use permitted within those land use categories of their local comprehensive plans; directs local governments to establish an expedited review process of comprehensive plan amendments if these types of facilities are not in their original comprehensive plans;

- Prohibits a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allows applicants 90 days to respond to requests for additional information (RAI);
- Redefines the term “affected person” to require persons affected by local government comprehensive plans to demonstrate that their substantial interests will be affected in order to challenge comprehensive plan changes;
- Redefines the term “aggrieved or adversely affected party” to require that any local government or person must demonstrate that their substantial interest will be affected in order to be granted standing to challenge the development order;
- Prohibits a county from requiring an applicant to obtain state and federal permits as a condition of approval for development permits;
- Expands the use of Internet-based self-certification services for exemptions and general permits;
- Expands the process for submitting RAIs;
- Provides for an expanded state programmatic general permit;
- Provides for incentive-based environmental permitting;
- Requires certain counties/municipalities with certain populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting;
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action;
- Provides expedited permitting for inland multimodal facilities; clarifies creation of regional action teams for expedited permitting for certain businesses; establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects; and
- Clarifies mitigation requirements for impacts related to transportation projects.

This bill substantially amends ss. 120.569, 120.60, 125.022, 161.041, 163.3180, 163.3184, 163.3215, 166.033, 373.026, 373.413, 373.4137, 373.4141, 373.4144, 373.441, 380.06, 380.0657, 403.061, 403.087, 403.412, 403.814, 403.973, Florida Statutes.

This bill creates ss. 125.0112, 161.032, 166.0447, 403.0874, Florida Statutes.

II. Present Situation:

There is no aspect of our daily lives that is not affected by environmental permitting, from the air we breathe and the water we drink to the roads we drive on and the homes we live in. Some activities require permits from the federal government on down to the local level and can be incredibly complex, such as airports. Others have such little cumulative impacts that they qualify for online self-certification, such as small single family docks.

The affected permitting and other areas proposed to be amended by this bill are diverse. They include administrative hearing challenge requirements and burdens, shortened timelines to review applications, biofuels manufacturing, limiting redundant federal, state and local permitting authority, agency requests for additional information (RAIs), burdens and requirements on challenging parties, Internet-based self-certification, state programmatic general

permitting, delegation of permitting authority, incentive-based permitting, general permits for surface water management systems, solid mineral mining, expedited permitting for economic development projects and mitigation. Each programmatic area will be addressed in the “effect of proposed changes” of the bill to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 120.569, F.S., relating to challenges under the Administrative Procedures Act.¹

Chapter 120, F.S., is called the Administrative Procedures Act (APA). It regulates how executive branch agencies adopt rules used to implement and administer their powers and duties. Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency. Pursuant to this section, a party is entitled to notification of any order, including a final order, arising from an administrative hearing. Notice must be mailed to each party or his or her attorney to the address on record. Additionally, under current law, when a party challenges an agency action, the applicant has the ultimate burden of persuasion and evidence in a de novo administrative proceeding.²

The bill provides that the notice described above, including any items required by the uniform rules adopted pursuant to s. 120.54(5), F.S.,³ may be provided via a link to a publicly available Internet website. The bill also provides that for any proceeding arising under Chapters 373,⁴ 378,⁵ or 403,⁶ F.S., if a third party nonapplicant challenges an agency’s issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence. This shifts the burden from the applicant to the third party nonapplicant who challenges the agency’s action.

Section 2 amends s. 120.60, F.S., relating to reviews of license applications.

Pursuant to s. 120.60(1), F.S., upon receipt of an application for a license, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and RAI. The application is not deemed “complete” until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may

¹ Section 120.51, F.S.

² See *Fla. Dep’t of Transportation v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

³ Section 120.54(5), F.S., provides that the Administration Commission shall adopt one or more sets of uniform rules of procedure for agencies to comply with. These rules shall establish procedures that comply with the requirements of Chapter 120. The uniform rules shall be the rules of procedure for each agency subject to Chapter 120 unless the Administration Commission grants an exception to the agency.

⁴ Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.

⁵ Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.

⁶ Chapter 403, F.S., establishes that the state’s public policy includes protecting water and air quality and supply for public health and safety and the environment.

request additional information. Under s. 373.4141, F.S., if a permit applicant believes an agency's RAI is not permitted by law or rule, he or she may request that the agency process the permit application. Such language is not included for licensing purposes.

The bill requires agencies to approve or deny licenses within 60 days instead of 90 days. It also allows a license applicant to request that a license application be processed if he or she believes the agency's RAI is not permitted by law or rule.

Section 3 creates s. 125.0112, F.S., relating to biofuels and renewable energy in counties.

Section 125.01, F.S., establishes the powers and duties of county governments. These powers and duties include the power to prepare and enforce comprehensive plans for development of the county and to establish, coordinate, and enforce zoning and business regulations as necessary to protect the public.⁷ Section 166.021, F.S., establishes the powers of municipalities. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. Municipal purpose is defined as any activity or power which may be exercised by the state or its political subdivisions. Accordingly, municipalities may adopt and enforce land use regulations as well.

To make biofuel processing and biomass generating facilities⁸ economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced. Transporting the feedstock can reduce the cost-effectiveness of these facilities. Currently, local land use plans may require a property owner to obtain an amendment to the local comprehensive plan, a special exemption, or some similar relief to allow the combination of industrial, agricultural, and/or silvicultural land uses on a site that the owner intends to use for purposes of biofuel processing or biomass generation.

The alternative state review process contained in s. 163.32465, F.S., is an expedited review process for local comprehensive plan amendments for urbanized areas. The Legislature's intent was to provide for less state oversight of comprehensive plan amendments from local governments in urban areas because of their planning capabilities and resources.

This statute states that "The Legislature finds and declares that this state's urban areas require a reduced level of state oversight because of their high degree of urbanization and the planning capabilities and resources of many of their local governments. An alternative state review process that is adequate to protect issues of regional or statewide importance should be created for appropriate local governments in these areas. Further, the Legislature finds that development, including urban infill and redevelopment, should be encouraged in these urban areas. The

⁷ See s. 125.01(g) and (h), F.S.

⁸ Section 366.91(2)(d), F.S., defines renewable energy as, "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." Section 366.91(2)(a), F.S., defines "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food process, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

Legislature finds that an alternative process for amending local comprehensive plans in these areas should be established with an objective of streamlining the process and recognizing local responsibility and accountability.”

The bill directs counties to define the construction and operation of a biofuels processing facility or renewable energy generating facility as a valid industrial, agricultural and silvicultural use in their comprehensive plans. If no such definition exists in counties’ comprehensive plans, the bill directs counties to establish a review process to determine the necessary changes to allow for construction of these types of facilities. The bill does not require counties to adopt the changes to allow these types of facilities. If, however, a county wishes to amend its comprehensive plan, the amendment is eligible for the alternative state review process pursuant to s. 163.32465, F.S. It also clarifies that construction and operation of one of these types of facilities does not affect the remainder property’s classification as agricultural.

Section 4 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant’s first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The bill prohibits a county from making approval of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a county development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for the applicant’s failure to fulfill its legal obligations. The bill allows a county to require that an applicant obtain all state and federal permits before commencing development.

Section 5 creates s. 161.032, F.S., relating to application review and RAIs.

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered “complete” until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The bill specifies how the Department of Environmental Protection (DEP) processes applications and issues RAIs. The bill requires the DEP to issue any RAIs within 30 days of receiving an application. It limits the types of information that can be included in a RAI. Once the RAI is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the RAI is not authorized by law or rule, he or she may request the DEP to process the application. Additionally, the bill allows the

applicant 90 days to respond to a RAI and for one 90-day extension for applicants who notify the DEP. Further extensions may be granted for good cause.

Section 6 amends s. 163.3184, F.S., relating to challenges to comprehensive plan amendments.

The Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act (GMA),⁹ was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. Pursuant to s. 163.3184, F.S., an "affected person" has the right to petition for an administrative hearing to challenge a Department of Community Affairs's (DCA) decision on a comprehensive plan or plan amendment.¹⁰ "Affected person" is defined as:

- The local government that adopted the plan or plan amendment,
- Persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment,
- Owners of real property abutting real property that is the subject of a future land use map, and
- An adjoining local government that can demonstrate substantial impacts to areas within its jurisdiction.

The bill adds an additional requirement to the "affected person" definition before persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment would receive this status. Under the bill, parties have to demonstrate that their "substantial interests" are being affected by the comprehensive plan or plan amendment before they can challenge a plan or plan amendment. This change will reduce the number of people determined to be "affected persons."

Section 7 amends s. 163.3215, F.S., relating to standing to enforce local comprehensive plans through development orders.

The GMA gives no regulatory authority to the DCA to enforce local government development order consistency with the provisions of its adopted comprehensive plans. However, s. 163.3215, F.S., provides that any "aggrieved or adversely affected party" can challenge a development order issued by a local government that is believed to be inconsistent with the adopted comprehensive plan. An "aggrieved or adversely affected party" must show he or she has an interest protected by a local government's comprehensive plan, and this interest will be adversely affected in some degree greater than the general public's interest. The term includes the owner, developer, or applicant for a development order.

The bill changes the definition of "aggrieved or adversely affected party" by requiring persons or local governments to demonstrate that their substantial interests will be affected by the development order before being granted this status. It also deletes language that allows for parties with lesser impacts to qualify for this status. This change will make it harder to attain

⁹ See chapter 163, Part II, F.S.

¹⁰ See s. 163.3184, F.S.

legal standing in challenges involving enforcement of local comprehensive plans through development orders.

Section 8 amends s. 166.033, F.S., relating to municipal development permits.

This section of the bill is substantially similar to section four of the bill, except it addresses municipalities instead of counties. The bill prohibits a municipality from making approval of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations. The bill allows a municipality to require that an applicant obtain all state and federal permits before commencing development.

Section 9 creates s. 166.0447, F.S., relating to biofuels and renewable energy in municipalities.

This section of the bill is substantially similar to section 3 of this bill, except it addresses municipalities instead of counties. The bill directs municipalities to define the construction and operation of a biofuels processing facility or renewable energy generating facility as a valid industrial, agricultural and silvicultural use in their comprehensive plans and for zoning purposes in their unincorporated areas. The bill prohibits municipalities from requiring operators of such facilities to obtain comprehensive plan amendments, rezoning, special exemptions, use permits, waivers, or variances. It prohibits municipalities from assessing any special fees in excess of \$1000.00 for operation of a facility in a area zoned industrial, agricultural or silvicultural. The bill requires facilities to meet applicable building codes. It also clarifies that construction and operation of one of these types of facilities does not affect the remainder property's classification as agricultural.

Section 10 amends s. 373.026, F.S., relating to DEP powers and duties.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self-certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing, repairing, and adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.¹¹

¹¹ Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, <http://appprod.dep.state.fl.us/erppa/> (last visited Mar. 26, 2011).

In addition, the water management districts (WMDs) allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,¹² interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

The bill requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits, if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 11 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request that the agency process the application if he or she believes that an RAI is not authorized by law or rule. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, or limitation to the number of times the agency may request additional information.

The bill requires a second RAI by the DEP or a WMD be signed by the supervisor of the project manager; a third by the division director who oversees the program area; a fourth by the assistant secretary of the DEP or the assistant executive director of the WMD; and beyond that, by the secretary of the DEP or the executive director of the WMD. The bill also shortens the time frame that permits must be approved or denied from 90 days to 60. Additionally, the bill requires local governments to approve or deny any permits that also need a state permit within 60 days of receiving the original application. Any application which is not approved or denied within 60 days is approved by default.

Section 12 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At

¹² Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf> (last visited Mar. 26, 2011).

times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.¹³

For activities occurring in “waters of the United States” in Florida, including wetlands, the Federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).¹⁴ Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,¹⁵ although the focus of that legislation is primarily maintaining navigable waters.¹⁶ When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps’ issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the state Environmental Resource Permit (ERP)¹⁷ program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.¹⁸

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorization for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.¹⁹ The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

¹³ Florida Dep’t of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida’s Wetlands*, available at <http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf> (last visited Mar. 28, 2011).

¹⁴ 33 U.S.C. §§ 1251-1387.

¹⁵ 33 U.S.C. § 403.

¹⁶ Florida Dep’t of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Mar. 28, 2011).

¹⁷ See generally ch. 373, Part IV, F.S.

¹⁸ Florida Dep’t of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at <http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf> (last visited Mar. 28, 2011).

¹⁹ *Id.* at 20.

The bill requires the DEP to obtain an expanded SPGP or a series of regional general permits from the Corps for activities in waters similar in nature that will only cause minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Where appropriate, the SPGP program should be used to eliminate the need for a separate individual approval from the Corps.

The bill directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the SPGP is at least as protective as existing state and federal laws. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

The bill also removes obsolete language requiring the DEP to report to the Legislature on how to consolidate federal and state wetland permitting functions.

Section 13 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and Florida Administrative Code (F.A.C.) sections authorize and provide procedures and considerations for the DEP to delegate the Environmental Resource Permit (ERP) program to local governments.²⁰ Local governments are entitled to request delegation authority from the DEP for a variety of programs. The DEP has authority to approve those delegations based on Florida law. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.²¹ Currently, only Broward County has a received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to “seek to increase governmental efficiency” and “maintain environmental standards.” Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective and streamlined permitting program; and

²⁰ In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.

²¹ Florida Dep’t of Environmental Protection, *Delegations*, available at <http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf> (last visited Mar. 26, 2011).

- The local government can demonstrate that it has the financial, technical and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.²²

According to the statute, delegation includes the applicability of chapter 120, F. S., (the APA), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a “delegation agreement” executed between the two parties.

The bill requires any county having a population of 75,000 or more, or a municipality that has local pollution control programs serving populations of more than 50,000, to apply for delegation of authority on or before Jun 1, 2012. Local governments that fail to apply for delegation of authority may not require permits that are similar, in part or in full, to the requirements needed to obtain an ERP from the DEP or the WMDs. The bill also prohibits the DEP and the WMDs from regulating the activities subject to the delegation within a jurisdiction unless regulation is required pursuant to the terms of the delegation agreement. This change will force local governments that meet the criteria to apply for ERP delegation or stop local permitting programs that are similar to the state ERP program.

Section 14 amends s. 403.061, F.S., to prohibit local governments from requiring a signature or other proof from DEP permit review staff that a project qualifies for a permit exemption or meets the permitting requirements of chs. 161, 253, 373 or 403, and self-certification permits. For more information about the present situation of this issue, see “Section 10” above.

Sections 15 creates s. 403.0874, F.S., relating to the “Florida Incentive Based Permitting Act.”

There were several bills introduced during the 2007 Regular Session that addressed incentive-based permitting.²³ Ultimately, none passed. Currently, the DEP has no comprehensive program to reward those in the regulated community who consistently meet or exceed their permit requirements, although having a record of compliance may lead to increased permit durations in some instances.²⁴ However, the DEP does not consistently consider applicants’ past violations or compliance when reviewing requests for new permits.

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility. In addition to listed permit requirements, pursuant to Rule 62-4.070(5), F.A.C., the DEP must consider environmental violations of the applicant, at any location in the state, when determining whether the applicant has provided the necessary “reasonable assurance” that it will be able to meet the permit requirements. However, the rule does not specify exactly which violations may be considered, leading to inconsistent application throughout the DEP’s permitting programs.

²² Chapter 62-344, F.A.C., provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

²³ See SB 738, HB 297 and HB 7171 (2007 Reg. Session).

²⁴ See s. 403.087(3), F.S.

Within certain individual program areas of the DEP, additional rules or statutes narrow the scope of Rule 62-620.320, F.A.C. For example, s. 403.707(8), F.S., authorizes the DEP to deny a permit application for a solid waste management facility if an applicant has repeatedly violated statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and is deemed to be irresponsible, as defined by Rule 62-701.320(3)(b), F.A.C. For wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the “reasonable assurance” determination.²⁵ For ERPs, the DEP considers specific ERP rule and permit violations.²⁶ Similar to Rule 62-620.320, F.A.C., none of these programmatic rules or statutes provide guidance as to what type of violations should be considered or how far back into an applicant’s history the DEP should review.

Additionally, under s. 403.0611, F.S., the DEP has statutory authority to adopt alternative permitting programs on a pilot project basis. The Legislature directed the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution. To date the DEP has not implemented a pilot program under this section.

In June of 2000, the EPA established the National Environmental Performance Track program. The EPA discontinued the program in March 2009.²⁷ The last year data are available for the program is 2007. The goal of the program was for government to complement existing programs with tools and strategies that protected people and the environment, reduced cost and spurred technological innovation.²⁸ Benefits of membership included exclusive regulatory and administrative benefits, reduced routine inspections, and public recognition.²⁹

The bill creates s. 403.0874, F.S., the “Florida Incentive-based Permitting Act.” It establishes the Legislature’s finding that the DEP should consider a permit applicant’s site-specific and program-specific history of compliance when considering whether to issue, renew, amend, or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This bill applies to all persons and regulated activities subject to permitting requirements of chs. 161, 373, and 403, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However, it does not apply to environmental permitting or authorization laws that regulate zoning, growth management or land use. Additionally, it does not apply where its implementation would jeopardize the state’s delegation or assumption of federal law or permit

²⁵ See Rule 62-620.320, F.A.C.

²⁶ See Rule 40B-400.104(2), F.A.C.

²⁷ U.S. Environmental Protection Agency, Letter to Performance Track Partners, available at http://www.epa.gov/performance-track/downloads/PTClosure_MEMO_CKent.pdf (last visited Mar. 26, 2011).

²⁸ U.S. Environmental Protection Agency, *National Environmental Performance Track*, available at <http://www.epa.gov/performance-track/> (last visited Mar. 26, 2011).

²⁹ *Id.*

programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chs. 161, 373 and 403, F.S.

The DEP is directed to consider permit applicants' compliance history for five years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least four of the five years prior; or
- Have conducted the same regulated activity at a different site within the state for at least four of the last five years prior; and
- Have not been subject to a formal administrative or civil judgment or criminal conviction in the last five years where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

The bill requires that an applicant must request applicable compliance incentives at the time of submitting a permit application or renewal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 15 days after the application is filed and final agency action shall be taken no later than 45 days after the application is deemed complete;
- Priority review of permit applications;
- Reduced number of routine compliance inspections;
- No more than two requests for additional information under s. 120.60, F.S.; and
- Longer permit durations.

Furthermore, the DEP is directed to identify and provide additional incentives to applicants who have 10-year compliance histories that resulted in:

- Reductions in actual or permitted discharges or emissions; or
- Reductions in the impacts of regulated activities on public lands or natural resources; or
- Implementation of voluntary environmental performance programs, such as environmental management systems; and
- The applicant having not been subject in the 10 years before the renewal application to a formal administrative or civil judgment or criminal conviction where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant meeting any of the first three criteria and the fourth criterion during the 10-year compliance history is entitled to automatic renewals, if there are no substantial changes in permitted activities or circumstances, and reduced or waived application fees.

The DEP must implement rulemaking within six months after the act becomes law. The DEP may identify additional incentives and programs consistent with this section's purpose. All rules must produce certain compliance incentives established in this bill. Rules adopted pursuant to this section are binding on the WMDs and any local government, which has delegated authority or assumed a regulatory program covered under this section.

Sections 16 and 17 amend ss. 161.041 and 373.413, F.S., respectively. They are conforming sections for the "Florida Incentive-based Permitting Act" and apply to beach and shore preservation and construction or alteration of affecting surface waters.

Section 18 amends 403.087, F.S., relating to permit revocation.

Currently, the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.³⁰

There is no requirement that the permit holder knowingly engaged in any of the four activities listed above. There is also no requirement that the violation directly relates to the permit at issue or that the DEP give the permit holder an opportunity to cure the cause of the violations.

The bill requires the DEP to prove that a permit holder knowingly violated any of the four conditions of the permit that may lead to revocation. It also requires the DEP to only look at the violations for the specific permit, or permitted facility, at issue. The bill allows the permit holder to correct the violation before the DEP revokes the permit.

Section 19 amends 403.412, F.S., relating to third party intervention in administrative proceedings.

Section 403.412, F.S., created the Environmental Protection Act of 1971 (Act). The Act permits the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief against:

- Any agency with the duty of enforcing laws, rules, and regulation for the protection of the environment of the state to compel enforcement; or
- Any person, including corporations, or governmental agencies to stop them from violating laws intended to protect the environment.

³⁰ Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

The statute explicitly states no demonstration of special injury different in kind from the general public at large is required. The Florida Supreme Court has ruled that the act authorizes private citizens, both corporate and non-corporate, to institute a suit under the act without a showing of special injury (i.e. a violation that causes injury different both in kind and degree from that suffered by the public at large).³¹ However, to state a cause of action under the act, it must appear that the question raised is real and not merely theoretical, and that the plaintiff has a bona fide and direct interest in the result. A mere allegation of an irreparable injury not sustained by any allegation of facts will not ordinarily warrant the granting of injunctive relief.

Before filing such a suit, the party must file with the appropriate agency a verified complaint describing the facts and explaining how the party is affected. This verified complaint is then forwarded by the agency to the parties charged with the violation. The agency has 30 days to take appropriate action before the complaining party can start court proceedings. If appropriate action is not taken within that 30 days the complaining party may institute suit.

In that suit, the court may add as a defendant, any agency who is responsible for enforcing the applicable environmental laws, rules, and regulations. However, a person cannot sue if the party charged with the violation is acting pursuant to a valid permit issued by the proper agency and is complying with that permit. The court may grant injunctive relief to stop the complained of activity and may also impose conditions on the defendant consistent with law and any rules or regulations adopted by any state or local environmental agency.

The prevailing party is entitled to costs and attorneys' fees. However, in an action involving a state NPDES permit, the court has discretions on whether to award attorneys' fees. If the court is doubtful about the plaintiff's ability to pay such costs and fees, the court may order the plaintiff to post a good and sufficient surety bond or cash.

In administrative, licensing, or other environmental proceedings, s. 403.12(5), F.S., grants the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state standing to intervene as a party. In order to intervene, a verified pleading must be filed asserting that the activity, conduct, or product to be licensed or permitted has or will have a negative effect on the environment of the state. The term "intervene," under s. 403.12, F.S., has been interpreted to mean that a party can initiate ss. 120.57 or s. 120.569, F.S., hearings in an administrative, licensing, or other environmental proceeding after notice of proposed agency action.

The APA allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. Under s. 120.52(1)(b)(8), F.S., "agency" is defined to include each entity described in chapter 380, F.S., which would include WMD governing boards. Administrative hearings involving disputed issues of fact are generally referred to the Division of Administrative Hearings (DOAH), comprised of an independent group of administrative law judges (ALJ), that hears cases involving most state agencies.

³¹ See *Florida Wildlife Federation v. Dep't. of Environmental Regulation*, 390 So.2d 64 (Fla. 1980).

In a challenge to a rule under s. 120.56, F.S., any person substantially affected by a rule or proposed rule may seek a determination as to whether the proposed or existing agency rule is an invalid exercise of delegated legislative authority. In the case of proposed rules, an invalid determination may be based on constitutional grounds. The hearings are conducted by an ALJ in the same way as provided in ss. 120.569 and 120.57, F.S., discussed below.

Under s. 120.569, F.S., in adjudicatory cases, where a decision affects “substantial interests,” the ALJ has the role of making findings of fact and drawing conclusions of law and providing a recommended order. The affected agency is responsible for entering a final order. Findings of fact by ALJs continue to be presumptively correct, and may not be lightly set aside by the agency. The ALJ conducts an evidentiary hearing and makes a determination as to the facts in question. These proceedings are less formal than court proceedings and function in most respects like a non-jury trial with an ALJ presiding. Section 120.57, F.S., sets out the procedures used. In a hearing involving disputed issues of material fact, an agency may enter a final order rejecting or modifying findings of fact upon review of the entire record and after stating with particularity that the findings were not based upon competent substantial evidence or did not comply with essential requirements of law. An agency may enter a final order rejecting or modifying conclusions of law over which it has substantive jurisdiction. The agency must state its reasons with particularity and must find that its substituted conclusion of law is at least as reasonable as the conclusion of law it rejected. Procedures applicable to cases not involving disputed issues of material fact are described in s. 120.57(2), F.S. Appellate review of agency actions is authorized by s. 120.68, F.S.

The bill removes language that specifically allows third parties to intervene without having to demonstrate a special injury different in kind than the general public. The change will make it more difficult for third parties to intervene in administrative proceedings to challenge an agency’s actions in that they will have to prove a “special injury.”

Section 20 amends s. 403.814, F.S., relating to general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.³² Projects 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.

The bill allows the DEP to create a general permit for construction, alteration and maintenance of a surface water management system for up to 40 acres. If the DEP chooses to create a general permit for these types of systems, the system may be constructed without action by the DEP or a WMD if:

³² Section 403.814(1), F.S.

- Design and calculations are certified by a professional engineer licensed under chapter 471, F.S.;
- It will not be located in surface waters or wetlands, as delineated in s. 373.421(1), F.S.;
- It will not cause water quantity impacts to receiving water and adjacent lands;
- It will not flood onsite or off-site property;
- It will not cause adverse impacts to surface water storage or conveyance;
- It will not cause water quality in receiving waters to violate applicable water quality standards or rules;
- It will not adversely impact groundwater levels or surface water flows;
- It will not adversely impact WMD works;
- It is not part of a larger plan of development or sale;
- It will comply with all NPDES requirements; and
- The professional engineer who is responsible for the design provides written notice to the DEP within 10 days of commencement of construction.

Additionally, the bill directs the DEP to create a general permit for construction, alteration, and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and
- The project is not part of a larger common plan of development or sale.

Section 21 amends s. 380.06, F.S., relating to mining activities.

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.³³ Regional planning councils assist the developer by coordinating multi-agency developments of regional impact (DRI) review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews DRIs for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.³⁴

The bill exempts any proposed phosphate mine and any proposed addition to, expansion of, or change to an existing phosphate mine from DRI review. Any proposed changes to any previously approved solid mineral mine DRI's development orders having vested rights will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or

³³ Section 380.06(1), F.S.

³⁴ Section 380.06(24), F.S.

approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.³⁵ Finally, any previously approved solid mineral mine DRI orders will continue to be effective unless rescinded by the developer.

Section 22 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(t), F.S., a “target industry business” is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state’s or the area’s economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility, also called an inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.³⁶ The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.³⁷

The bill allows for expedited permitting for any inland multimodal facility that receives and sends cargo to and from Florida’s ports.

Section 23 amends 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

³⁵ Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

³⁶ Florida Dep’t of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Mar. 26, 2011).

³⁷ Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at <http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/> (last visited Mar. 26, 2011).

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

Under s. 403.973, F.S., OTTED or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or
- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ'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 ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's

recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:
 - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
 - Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
 - Extract natural resources;
 - Produce oil; or
 - Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The bill revises the structure and process for expedited permitting of targeted industries. It substitutes the Secretary of DEP, or his or her designee, for OTTED. It clarifies that commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs qualify for expedited review. The bill requires regional teams to be established through the execution of a project-specific MOA. Finally, the bill provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 24 amends 163.3180, F.S., relating to concurrency.

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system and measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.³⁸

³⁸ Florida Dep't of Community Affairs, *Division of Community Planning*, <http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm> (last visited Mar. 27, 2011).

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), F.A.C., allows local governments to evaluate transportation concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.³⁹

The Florida Department of Transportation (DOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or “*de minimis*” are exempted from concurrency, where certain criteria are met. There are two alternatives:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on “assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.”⁴⁰ To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

The bill provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo

³⁹ *Id.*

⁴⁰ Section 163.31801(15)(a), F.S.

storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is proximate to regionally significant road and rail transportation facilities; and
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 25 amends s. 373.4137, F.S., relating to mitigation requirement for specified transportation projects.

Enacted in 1996, s. 373.4137, F.S., directs the Florida Department of Transportation (DOT) to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The DOT creates escrow accounts with the DEP or a WMD for its mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., are also able to create escrow accounts with the WMDs and the DEP for their mitigation requirements.

On an annual basis, the DOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over or under transfer of funds.

In addition to using mitigation banks to offset the adverse effects of transportation projects on wetlands, the bill provides for the use of any other mitigation options that satisfy state and federal requirements, including, but not limited to U.S. general compensatory mitigation requirements.⁴¹ The bill makes it optional for transportation authorities to participate in the program. It provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD

⁴¹ 33 U.F.R. s. 332.3(b), available at http://edocket.access.gpo.gov/cfr_2009/julqtr/pdf/33cfr332.3.pdf (last visited Mar. 27, 2011).

will have continuing responsibility for the mitigation project. Lastly, it allows the DOT, a transportation authority or a WMD to elect to exclude specific projects from the mitigation plan.

Section 26 provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.

If a local government’s comprehensive plan does not allow for construction of a biofuels processing facility, this bill requires the local government to establish a review process for that purpose. It is not known how many local governments allow for the construction of biofuels processing facilities in their comprehensive plans. Further examination is necessary to determine the number of impacted local governments and the costs associated with establishing a review process. However, given the relative complexity of these facilities, this requirement is likely a mandate and will require a two-thirds vote and a finding of important state interest.

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:

Reducing environmental permitting requirements, time, necessity and compliance costs for those who qualify for incentive-based rewards will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated at this point.

Defendant parties to administrative hearings may also save on litigation costs as their burdens will be reduced. Alternatively, the costs for interested third parties in administrative hearings will likely increase as their burdens for persuasion, evidence and simply proving their substantial interests will be increased or shifted to them.

The DEP's reduced permit revocation ability may result in the loss of federal delegation of some programs. Such a loss would increase permit application costs for private parties because both federal and state permits would subsequently be required. The DEP has indicated that permit costs may actually increase due to time limitations on both permit application reviews and RAIs. However, the impact of this cannot be determined to be either positive or negative as there are too many variables.

Biofuel and renewable energy facilities should have an easier path get permitted at the local government level. This impact cannot be determined but may be significant in both savings and economic development.

C. Government Sector Impact:

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. When a local government is a permit applicant, increased availability of web-based authorizations should reduce permitting costs, as well as reduced permit approval times, will save them money, but only if overall permit times are actually reduced. Additionally, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues.

According to the DEP's analysis, reducing the time frame for permit application reviews, RAIs, and ultimately approval or denial will require the addition of 100 full-time equivalents (FTE). The DEP has calculated that each FTE's entire compensation package is between \$50,000 to \$75,000. The total impact to the DEP to implement all requirements of this bill in FTEs alone will be between \$5 million to \$7.5 million annually. If the DEP's assessment is accurate, similar costs could also affect the WMDs permitting costs. Lastly, the WMDs have expressed concerns that the changes to the DOT mitigation funding scheme may leave them with insufficient funds to provide mitigation for DOT projects.

VI. Technical Deficiencies:

In section 21, the bill applies the DRI review exemption inconsistently to both "phosphate" and "solid mineral" mines. While all phosphate mines are solid mineral mines, not all solid mineral

mines are phosphate mines. This may cause confusion as to how the bill is applied to mining activities.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
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The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (p) is added to subsection (2) of section 120.569, Florida Statutes, to read:

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding shall be for the permit applicant to present a prima facie case



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13 demonstrating entitlement to the license, permit, or conceptual
14 approval. Subsequent to the presentation of the applicant's
15 prima facie case, the petitioner initiating the action
16 challenging the issuance of the license, permit, or conceptual
17 approval has the ultimate burden of persuasion and has the
18 burden of going forward to prove its case in opposition to the
19 license, permit, or conceptual approval through the presentation
20 of competent and substantial evidence. The permit applicant may
21 on rebuttal present any evidence relevant to demonstrating that
22 the application meets the conditions for issuance.

23 Notwithstanding subsection (1), this paragraph applies to
24 proceedings under s. 120.574.

25 Section 2. Section 125.0112, Florida Statutes, is created
26 to read:

27 125.0112 Biofuels and renewable energy.—The construction
28 and operation of a biofuel processing facility of 50 million
29 gallons per year or less or a renewable energy generating
30 facility of 50 megawatts or less, as defined in s. 366.91(2)
31 (d), and the cultivation and production of bioenergy, as defined
32 pursuant to s. 163.3177, except where biomass material derived
33 from municipal solid waste or landfill gases provides the
34 renewable energy for such facilities, shall be considered by a
35 local government to be a valid industrial, agricultural, and
36 silvicultural use permitted within those land use categories in
37 the local comprehensive land use plan. If the local
38 comprehensive plan does not specifically allow for the
39 construction of a biofuel processing facility or renewable
40 energy facility, the local government may establish a specific
41 review process that may include expediting local review of any



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42 necessary comprehensive plan amendment, zoning change, use
43 permit, waiver, variance, or special exemption. Local expedited
44 review of a proposed biofuel processing facility or a renewable
45 energy facility does not obligate a local government to approve
46 such proposed use. A comprehensive plan amendment necessary to
47 accommodate a biofuel processing facility or renewable energy
48 facility shall, if approved by the local government, be eligible
49 for the alternative state review process in s. 163.32465. The
50 construction and operation of a facility and related
51 improvements on a portion of a property under this section does
52 not affect the remainder of the property's classification as
53 agricultural under s. 193.461.

54 Section 3. Section 125.022, Florida Statutes, is amended to
55 read:

56 125.022 Development permits.—When a county denies an
57 application for a development permit, the county shall give
58 written notice to the applicant. The notice must include a
59 citation to the applicable portions of an ordinance, rule,
60 statute, or other legal authority for the denial of the permit.
61 As used in this section, the term "development permit" has the
62 same meaning as in s. 163.3164. A county may not require as a
63 condition of processing a development permit, that an applicant
64 obtain a permit or approval from any other state or federal
65 agency unless the agency has issued a notice of intent to deny
66 the federal or state permit before the county action on the
67 local development permit. Issuance of a development permit by a
68 county does not in any way create any rights on the part of the
69 applicant to obtain a permit from another state or federal
70 agency and does not create any liability on the part of the



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71 county for issuance of the permit if the applicant fails to
72 fulfill its legal obligations to obtain requisite approvals or
73 fulfill the obligations imposed by another state or a federal
74 agency. A county may attach such a disclaimer to the issuance of
75 a development permit, and may include a permit condition that
76 all other applicable state or federal permits be obtained before
77 commencement of the development. This section does not prohibit
78 a county from providing information to an applicant regarding
79 what other state or federal permits may apply.

80 Section 4. Section 161.032, Florida Statutes, is created to
81 read:

82 161.032 Application review; request for additional
83 information.-

84 (1) Within 30 days after receipt of an application for a
85 permit under this part, the department shall review the
86 application and shall request submission of any additional
87 information the department is permitted to require by law. If
88 the applicant believes that a request for additional information
89 is not authorized by law or rule, the applicant may request a
90 hearing pursuant to s. 120.57. Within 30 days after receipt of
91 such additional information, the department shall review such
92 additional information and may request only that information
93 needed to clarify such additional information or to answer new
94 questions raised by or directly related to such additional
95 information. If the applicant believes that the request for such
96 additional information by the department is not authorized by
97 law or rule, the department, at the applicant's request, shall
98 proceed to process the permit application.

99 (2) Notwithstanding s. 120.60, an applicant for a permit



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100 under this part has 90 days after the date of a timely request
101 for additional information to submit such information. If an
102 applicant requires more than 90 days in order to respond to a
103 request for additional information, the applicant must notify
104 the agency processing the permit application in writing of the
105 circumstances, at which time the application shall be held in
106 active status for no more than one additional period of up to 90
107 days. Additional extensions may be granted for good cause shown
108 by the applicant. A showing that the applicant is making a
109 diligent effort to obtain the requested additional information
110 constitutes good cause. Failure of an applicant to provide the
111 timely requested information by the applicable deadline shall
112 result in denial of the application without prejudice.

113 Section 5. Section 166.033, Florida Statutes, is amended to
114 read:

115 166.033 Development permits.—When a municipality denies an
116 application for a development permit, the municipality shall
117 give written notice to the applicant. The notice must include a
118 citation to the applicable portions of an ordinance, rule,
119 statute, or other legal authority for the denial of the permit.
120 As used in this section, the term “development permit” has the
121 same meaning as in s. 163.3164. A municipality may not require
122 as a condition of processing a development permit, that an
123 applicant obtain a permit or approval from any other state or
124 federal agency unless the agency has issued a notice of intent
125 to deny the federal or state permit before the municipal action
126 on the local development permit. Issuance of a development
127 permit by a municipality does not in any way create any right on
128 the part of an applicant to obtain a permit from another state



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129 or federal agency and does not create any liability on the part
130 of the municipality for issuance of the permit if the applicant
131 fails to fulfill its legal obligations to obtain requisite
132 approvals or fulfill the obligations imposed by another state or
133 federal agency. A municipality may attach such a disclaimer to
134 the issuance of development permits and may include a permit
135 condition that all other applicable state or federal permits be
136 obtained before commencement of the development. This section
137 does not prohibit a municipality from providing information to
138 an applicant regarding what other state or federal permits may
139 apply.

140 Section 6. Section 166.0447, Florida Statutes, is created
141 to read:

142 166.0447 Biofuels and renewable energy.—The construction
143 and operation of a biofuel processing facility of 50 million
144 gallons per year or less or a renewable energy generating
145 facility of 50 megawatts or less, as defined in s. 366.91(2)
146 (d), and the cultivation and production of bioenergy, as defined
147 pursuant to s. 163.3177, except where biomass material derived
148 from municipal solid waste or landfill gases provides the
149 renewable energy for such facilities, are each a valid
150 industrial, agricultural, and silvicultural use permitted within
151 those land use categories in the local comprehensive land use
152 plan and for purposes of any local zoning regulation within an
153 incorporated area of a municipality. Such comprehensive land use
154 plans and local zoning regulations may not require the owner or
155 operator of a biofuel processing facility or a renewable energy
156 generating facility to obtain any comprehensive plan amendment,
157 rezoning, special exemption, use permit, waiver, or variance, or



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158 to pay any special fee in excess of \$1,000 to operate in an area
159 zoned for or categorized as industrial, agricultural, or
160 silvicultural use. This section does not exempt biofuel
161 processing facilities and renewable energy generating facilities
162 from complying with building code requirements. The construction
163 and operation of a facility and related improvements on a
164 portion of a property pursuant to this section does not affect
165 the remainder of that property's classification as agricultural
166 pursuant to s. 193.461.

167 Section 7. Paragraphs (a) and (b) of subsection (3) of
168 section 258.397, Florida Statutes, are amended to read:

169 258.397 Biscayne Bay Aquatic Preserve.—

170 (3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the
171 Internal Improvement Trust Fund is authorized and directed to
172 maintain the aquatic preserve hereby created pursuant and
173 subject to the following provisions:

174 (a) No further sale, transfer, or lease of sovereignty
175 submerged lands in the preserve shall be approved or consummated
176 by the board of trustees, except upon a showing of extreme
177 hardship on the part of the applicant and a determination by the
178 board of trustees that such sale, transfer, or lease is in the
179 public interest. A municipal applicant proposing a project under
180 this subsection is exempt from showing extreme hardship.

181 (b) No further dredging or filling of submerged lands of
182 the preserve shall be approved or tolerated by the board of
183 trustees except:

184 1. Such minimum dredging and spoiling as may be authorized
185 for public navigation projects or for such minimum dredging and
186 spoiling as may be constituted as a public necessity or for



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187 preservation of the bay according to the expressed intent of
188 this section.

189 2. Such other alteration of physical conditions, including
190 the placement of riprap, as may be necessary to enhance the
191 quality and utility of the preserve.

192 3. Such minimum dredging and filling as may be authorized
193 for the creation and maintenance of marinas, piers, and docks
194 and their attendant navigation channels and access roads. Such
195 projects may only be authorized upon a specific finding by the
196 board of trustees that there is assurance that the project will
197 be constructed and operated in a manner that will not adversely
198 affect the water quality and utility of the preserve. This
199 subparagraph shall not authorize the connection of upland canals
200 to the waters of the preserve.

201 4. Such dredging as is necessary for the purpose of
202 eliminating conditions hazardous to the public health or for the
203 purpose of eliminating stagnant waters, islands, and spoil
204 banks, the dredging of which would enhance the aesthetic and
205 environmental quality and utility of the preserve and be clearly
206 in the public interest as determined by the board of trustees.

207 5. Such dredging and filling as is necessary for the
208 creation of public waterfront promenades.

209
210 Any dredging or filling under this subsection or improvements
211 under subsection (5) shall be approved only after public notice
212 as provided by s. 253.115.

213 Section 8. Subsection (10) is added to section 373.026,
214 Florida Statutes, to read:

215 373.026 General powers and duties of the department.—The



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216 department, or its successor agency, shall be responsible for
217 the administration of this chapter at the state level. However,
218 it is the policy of the state that, to the greatest extent
219 possible, the department may enter into interagency or
220 interlocal agreements with any other state agency, any water
221 management district, or any local government conducting programs
222 related to or materially affecting the water resources of the
223 state. All such agreements shall be subject to the provisions of
224 s. 373.046. In addition to its other powers and duties, the
225 department shall, to the greatest extent possible:

226 (10) Expand the use of Internet-based self-certification
227 services for appropriate exemptions and general permits issued
228 by the department and the water management districts, if such
229 expansion is economically feasible. In addition to expanding the
230 use of Internet-based self-certification services for
231 appropriate exemptions and general permits, the department and
232 water management districts shall identify and develop general
233 permits for appropriate activities currently requiring
234 individual review that could be expedited through the use of
235 applicable professional certification.

236 Section 9. Section 373.4141, Florida Statutes, is amended
237 to read:

238 373.4141 Permits; processing.—

239 (1) Within 30 days after receipt of an application for a
240 permit under this part, the department or the water management
241 district shall review the application and shall request
242 submittal of all additional information the department or the
243 water management district is permitted by law to require. If the
244 applicant believes any request for additional information is not



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245 authorized by law or rule, the applicant may request a hearing
246 pursuant to s. 120.57. Within 30 days after receipt of such
247 additional information, the department or water management
248 district shall review it and may request only that information
249 needed to clarify such additional information or to answer new
250 questions raised by or directly related to such additional
251 information. If the applicant believes the request of the
252 department or water management district for such additional
253 information is not authorized by law or rule, the department or
254 water management district, at the applicant's request, shall
255 proceed to process the permit application. The department or
256 water management district may request additional information no
257 more than twice, unless the applicant waives this limitation in
258 writing. If the applicant does not provide a written response to
259 the second request for additional information within 90 days, or
260 another time period mutually agreed upon between the applicant
261 and department or water management district, the application
262 shall be considered withdrawn.

263 (2) A permit shall be approved or denied within 60 ~~90~~ days
264 after receipt of the original application, the last item of
265 timely requested additional material, or the applicant's written
266 request to begin processing the permit application.

267 (3) Processing of applications for permits for affordable
268 housing projects shall be expedited to a greater degree than
269 other projects.

270 (4) A state agency or agency of the state may not require
271 as a condition of approval for a permit or as an item to
272 complete a pending permit application that an applicant obtain a
273 permit or approval from any other local, state, or federal



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274 agency without explicit statutory authority to require such
275 permit or approval from another agency.

276 Section 10. Section 373.4144, Florida Statutes, is amended
277 to read:

278 373.4144 Federal environmental permitting.-

279 (1) It is the intent of the Legislature to:

280 (a) Facilitate coordination and a more efficient process of
281 implementing regulatory duties and functions between the
282 Department of Environmental Protection, the water management
283 districts, the United States Army Corps of Engineers, the United
284 States Fish and Wildlife Service, the National Marine Fisheries
285 Service, the United States Environmental Protection Agency, the
286 Fish and Wildlife Conservation Commission, and other relevant
287 federal and state agencies.

288 (b) Authorize the Department of Environmental Protection to
289 obtain issuance by the United States Army Corps of Engineers,
290 pursuant to state and federal law and as set forth in this
291 section, of an expanded state programmatic general permit, or a
292 series of regional general permits, for categories of activities
293 in waters of the United States governed by the Clean Water Act
294 and in navigable waters under the Rivers and Harbors Act of 1899
295 which are similar in nature, which will cause only minimal
296 adverse environmental effects when performed separately, and
297 which will have only minimal cumulative adverse effects on the
298 environment.

299 (c) Use the mechanism of such a state general permit or
300 such regional general permits to eliminate overlapping federal
301 regulations and state rules that seek to protect the same
302 resource and to avoid duplication of permitting between the



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303 United States Army Corps of Engineers and the department for
304 minor work located in waters of the United States, including
305 navigable waters, thus eliminating, in appropriate cases, the
306 need for a separate individual approval from the United States
307 Army Corps of Engineers while ensuring the most stringent
308 protection of wetland resources.

309 (d) Direct the department not to seek issuance of or take
310 any action pursuant to any such permit or permits unless such
311 conditions are at least as protective of the environment and
312 natural resources as existing state law under this part and
313 federal law under the Clean Water Act and the Rivers and Harbors
314 Act of 1899. ~~The department is directed to develop, on or before~~
315 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
316 ~~maximum extent practicable, the federal and state wetland~~
317 ~~permitting programs. It is the intent of the Legislature that~~
318 ~~all dredge and fill activities impacting 10 acres or less of~~
319 ~~wetlands or waters, including navigable waters, be processed by~~
320 ~~the state as part of the environmental resource permitting~~
321 ~~program implemented by the department and the water management~~
322 ~~districts. The resulting mechanism or plan shall analyze and~~
323 ~~propose the development of an expanded state programmatic~~
324 ~~general permit program in conjunction with the United States~~
325 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
326 ~~Act, Pub. L. No. 92 -500, as amended, 33 U.S.C. ss. 1251 et~~
327 ~~seq., and s. 10 of the Rivers and Harbors Act of 1899.~~
328 ~~Alternatively, or in combination with an expanded state~~
329 ~~programmatic general permit, the mechanism or plan may propose~~
330 ~~the creation of a series of regional general permits issued by~~
331 ~~the United States Army Corps of Engineers pursuant to the~~



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332 ~~referenced statutes. All of the regional general permits must be~~
333 ~~administered by the department or the water management districts~~
334 ~~or their designees.~~

335 (2) In order to effectuate efficient wetland permitting and
336 avoid duplication, the department and water management districts
337 are authorized to implement a voluntary state programmatic
338 general permit for all dredge and fill activities impacting 3
339 acres or less of wetlands or other surface waters, including
340 navigable waters, subject to agreement with the United States
341 Army Corps of Engineers, if the general permit is at least as
342 protective of the environment and natural resources as existing
343 state law under this part and federal law under the Clean Water
344 Act and the Rivers and Harbors Act of 1899. ~~The department is~~
345 ~~directed to file with the Speaker of the House of~~
346 ~~Representatives and the President of the Senate a report~~
347 ~~proposing any required federal and state statutory changes that~~
348 ~~would be necessary to accomplish the directives listed in this~~
349 ~~section and to coordinate with the Florida Congressional~~
350 ~~Delegation on any necessary changes to federal law to implement~~
351 ~~the directives.~~

352 (3) Nothing in this section shall be construed to preclude
353 the department from pursuing a series of regional general
354 permits for construction activities in wetlands or surface
355 waters or complete assumption of federal permitting programs
356 regulating the discharge of dredged or fill material pursuant to
357 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
358 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
359 Act of 1899, so long as the assumption encompasses all dredge
360 and fill activities in, on, or over jurisdictional wetlands or



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361 waters, including navigable waters, within the state.

362 Section 11. Present subsections (3), (4), and (5) of
363 section 373.441, Florida Statutes, are renumbered as subsections
364 (6), (7), and (8), respectively, and new subsections (3), (4),
365 and (5) are added to that section to read:

366 373.441 Role of counties, municipalities, and local
367 pollution control programs in permit processing; delegation.—

368 (3) A county having a population of 75,000 or more or a
369 municipality having a population of more than 50,000 which
370 implements a local pollution control program regulating wetlands
371 or surface waters throughout its geographic boundary must apply
372 for delegation of state environmental resource permitting
373 authority on or before June 1, 2012. A county, municipality, or
374 local pollution control program that fails to receive delegation
375 of authority by June 1, 2013, may not require permits that in
376 part or in full are substantially similar to the requirements
377 needed to obtain an environmental resource permit.

378 (4) Upon delegation to a qualified local government, the
379 department and water management district may not regulate the
380 activities subject to the delegation within that jurisdiction
381 unless regulation is required pursuant to the terms of the
382 delegation agreement.

383 (5) This section does not prohibit or limit a local
384 government from adopting a pollution control program regulating
385 wetlands or surface waters after June 1, 2012, if the local
386 government applies for and receives delegation of state
387 environmental resource permitting authority within 1 year after
388 adopting such a program.

389 Section 12. Section 376.30715, Florida Statutes, is amended



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390 to read:

391 376.30715 Innocent victim petroleum storage system
392 restoration.—A contaminated site acquired by the current owner
393 prior to July 1, 1990, which has ceased operating as a petroleum
394 storage or retail business prior to January 1, 1985, is eligible
395 for financial assistance pursuant to s. 376.305(6),
396 notwithstanding s. 376.305(6)(a). For purposes of this section,
397 the term “acquired” means the acquisition of title to the
398 property; however, a subsequent transfer of the property to a
399 spouse or child of the owner, a surviving spouse or child of the
400 owner in trust or free of trust, ~~or~~ a revocable trust created
401 for the benefit of the settlor, or a corporate entity created by
402 the owner to hold title to the site does not disqualify the site
403 from financial assistance pursuant to s. 376.305(6) and
404 applicants previously denied coverage may reapply. Eligible
405 sites shall be ranked in accordance with s. 376.3071(5).

406 Section 13. Section 403.0874, Florida Statutes, is created
407 to read:

408 403.0874 Incentive-based permitting program.—

409 (1) SHORT TITLE.—This section may be cited as the “Florida
410 Incentive-based Permitting Act.”

411 (2) FINDINGS AND INTENT.—The Legislature finds and declares
412 that the department should consider compliance history when
413 deciding whether to issue, renew, amend, or modify a permit by
414 evaluating an applicant’s site-specific and program-specific
415 relevant aggregate compliance history. Persons having a history
416 of complying with applicable permits or state environmental laws
417 and rules are eligible for permitting benefits, including, but
418 not limited to, expedited permit application reviews, longer



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419 duration permit periods, decreased announced compliance
420 inspections, and other similar regulatory and compliance
421 incentives to encourage and reward such persons for their
422 environmental performance.

423 (3) APPLICABILITY.—

424 (a) This section applies to all persons and regulated
425 activities that are subject to the permitting requirements of
426 chapter 161, chapter 373, or this chapter, and all other
427 applicable state or federal laws that govern activities for the
428 purpose of protecting the environment or the public health from
429 pollution or contamination.

430 (b) Notwithstanding paragraph (a), this section does not
431 apply to certain permit actions or environmental permitting laws
432 such as:

433 1. Environmental permitting or authorization laws that
434 regulate activities for the purpose of zoning, growth
435 management, or land use; or

436 2. Any federal law or program delegated or assumed by the
437 state to the extent that implementation of this section, or any
438 part of this section, would jeopardize the ability of the state
439 to retain such delegation or assumption.

440 (c) As used in this section, a the term "regulated
441 activity" means any activity, including, but not limited to, the
442 construction or operation of a facility, installation, system,
443 or project, for which a permit, certification, or authorization
444 is required under chapter 161, chapter 373, or this chapter.

445 (4) COMPLIANCE HISTORY.—The compliance history period shall
446 be the 10 years before the date any permit or renewal
447 application is received by the department. Any person is



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448 entitled to the incentives under paragraph (5) (a) if:

449 (a)1. The applicant has conducted the regulated activity at
450 the same site for which the permit or renewal is sought for at
451 least 8 of the 10 years before the date the permit application
452 is received by the department; or

453 2. The applicant has conducted the same regulated activity
454 at a different site within the state for at least 8 of the 10
455 years before the date the permit or renewal application is
456 received by the department.

457 (b) In the 10 years before the date the permit or renewal
458 application is received by the department or water management
459 district, the applicant has not been subject to a formal
460 administrative or civil judgment or criminal conviction whereby
461 an administrative law judge or civil or criminal court found the
462 applicant violated the applicable law or rule or has been the
463 subject of an administrative settlement or consent orders,
464 whether formal or informal, that established a violation of an
465 applicable law or rule.

466 (c) The applicant can demonstrate during a 10-year
467 compliance history period the implementation of activities or
468 practices that resulted in:

469 1. Reductions in actual or permitted discharges or
470 emissions;

471 2. Reductions in the impacts of regulated activities on
472 public lands or natural resources; and

473 3. Implementation of voluntary environmental performance
474 programs, such as environmental management systems.

475 (5) COMPLIANCE INCENTIVES.-

476 (a) An applicant shall request all applicable incentives at



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477 the time of application submittal. Unless otherwise prohibited
478 by state or federal law, rule, or regulation, and if the
479 applicant meets all other applicable criteria for the issuance
480 of a permit or authorization, an applicant is entitled to the
481 following incentives:

482 1. Expedited reviews on permit actions, including, but not
483 limited to, initial permit issuance, renewal, modification, and
484 transfer, if applicable. Expedited review means, at a minimum,
485 that any request for additional information regarding a permit
486 application shall be issued no later than 15 days after the
487 application is filed, and final agency action shall be taken no
488 later than 45 days after the application is deemed complete;

489 2. Priority review of permit application;

490 3. Reduced number of routine compliance inspections;

491 4. No more than two requests for additional information
492 under s. 120.60; and

493 5. Longer permit period durations.

494 (6) RULEMAKING.—The department shall implement rulemaking
495 within 6 months after the effective date of this act. Such
496 rulemaking may identify additional incentives and programs not
497 expressly enumerated under this section, so long as each
498 incentive is consistent with the Legislature's purpose and
499 intent of this section. Any rule adopted by the department to
500 administer this section shall be deemed an invalid exercise of
501 delegated legislative authority if the department cannot
502 demonstrate how such rules will produce the compliance
503 incentives set forth in subsection (5). The department's rules
504 adopted under this section are binding on the water management
505 districts and any local government that has been delegated or



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506 assumed a regulatory program to which this section applies.

507 Section 14. Subsections (5), (6), and (7) are added to
508 section 161.041, Florida Statutes, to read:

509 161.041 Permits required.—

510 (5) The provisions of s. 403.0874, relating to the
511 incentive-based permitting program, apply to all permits issued
512 under this chapter.

513 (6) The department may not require as a permit condition
514 sediment quality specifications or turbidity standards more
515 stringent than those provided for in this chapter, chapter 373,
516 or the Florida Administrative Code. The department may not issue
517 guidelines that are enforceable as standards without going
518 through the rulemaking process pursuant to chapter 120.

519 (7) As an incentive for permit applicants, it is the intent
520 of the Legislature to simplify the permitting for periodic
521 maintenance of beach renourishment projects previously permitted
522 and restored under the Joint Coastal Permit process pursuant to
523 this section or part IV of chapter 373. The department shall
524 amend chapters 62B-41 and 62B-49 of the Florida Administrative
525 Code to streamline the permitting process for periodic
526 maintenance projects.

527 Section 15. Subsection (6) is added to section 373.413,
528 Florida Statutes, to read:

529 373.413 Permits for construction or alteration.—

530 (6) The provisions of s. 403.0874, relating to the
531 incentive-based permitting program, apply to permits issued
532 under this section.

533 Section 16. Subsection (11) of section 403.061, Florida
534 Statutes, is amended to read:



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535 403.061 Department; powers and duties.—The department shall
536 have the power and the duty to control and prohibit pollution of
537 air and water in accordance with the law and rules adopted and
538 promulgated by it and, for this purpose, to:

539 (11) Establish ambient air quality and water quality
540 standards for the state as a whole or for any part thereof, and
541 also standards for the abatement of excessive and unnecessary
542 noise. The department shall ~~is authorized to~~ establish
543 reasonable zones of mixing for discharges into waters where
544 assimilative capacity in the receiving water is available. Zones
545 of discharge to groundwater are authorized to a facility or
546 owner's property boundary and extending to the base of a
547 specifically designated aquifer or aquifers. Discharges that
548 occur within a zone of discharge or on land that is over a zone
549 of discharge do not create liability under this chapter or
550 chapter 376 for site cleanup and the exceedance of soil cleanup
551 target levels is not a basis for enforcement or site cleanup.

552 (a) When a receiving body of water fails to meet a water
553 quality standard for pollutants set forth in department rules, a
554 steam electric generating plant discharge of pollutants that is
555 existing or licensed under this chapter on July 1, 1984, may
556 nevertheless be granted a mixing zone, provided that:

557 1. The standard would not be met in the water body in the
558 absence of the discharge;

559 2. The discharge is in compliance with all applicable
560 technology-based effluent limitations;

561 3. The discharge does not cause a measurable increase in
562 the degree of noncompliance with the standard at the boundary of
563 the mixing zone; and



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564 4. The discharge otherwise complies with the mixing zone
565 provisions specified in department rules.

566 (b) No mixing zone for point source discharges shall be
567 permitted in Outstanding Florida Waters except for:

568 1. Sources that have received permits from the department
569 prior to April 1, 1982, or the date of designation, whichever is
570 later;

571 2. Blowdown from new power plants certified pursuant to the
572 Florida Electrical Power Plant Siting Act;

573 3. Discharges of water necessary for water management
574 purposes which have been approved by the governing board of a
575 water management district and, if required by law, by the
576 secretary; and

577 4. The discharge of demineralization concentrate which has
578 been determined permissible under s. 403.0882 and which meets
579 the specific provisions of s. 403.0882(4)(a) and (b), if the
580 proposed discharge is clearly in the public interest.

581 (c) The department, by rule, shall establish water quality
582 criteria for wetlands which criteria give appropriate
583 recognition to the water quality of such wetlands in their
584 natural state.

585

586 Nothing in this act shall be construed to invalidate any
587 existing department rule relating to mixing zones. The
588 department shall cooperate with the Department of Highway Safety
589 and Motor Vehicles in the development of regulations required by
590 s. 316.272(1). The department shall implement such programs in
591 conjunction with its other powers and duties and shall place
592 special emphasis on reducing and eliminating contamination that



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593 presents a threat to humans, animals or plants, or to the
594 environment.

595 Section 17. Subsection (7) of section 403.087, Florida
596 Statutes, is amended to read:

597 403.087 Permits; general issuance; denial; revocation;
598 prohibition; penalty.—

599 (7) A permit issued pursuant to this section shall not
600 become a vested right in the permittee. The department may
601 revoke any permit issued by it if it finds that the
602 permitholder:

603 (a) ~~Has~~ Submitted false or inaccurate information in the
604 ~~his or her~~ application for such permit;

605 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~
606 ~~regulations~~, or ~~permit~~ conditions;

607 (c) ~~Has~~ Failed to submit operational reports or other
608 information required by department rule which directly relate to
609 such permit and has refused to correct or cure such violations
610 when requested to do so ~~or regulation~~; or

611 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the
612 facility authorized by such permit.

613 Section 18. Subsection (2) of section 403.1838, Florida
614 Statutes, is amended to read:

615 403.1838 Small Community Sewer Construction Assistance
616 Act.—

617 (2) The department shall use funds specifically
618 appropriated to award grants under this section to assist
619 financially disadvantaged small communities with their needs for
620 adequate sewer facilities. For purposes of this section, the
621 term "financially disadvantaged small community" means a



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622 municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer
623 ~~less~~, according to the latest decennial census and a per capita
624 annual income less than the state per capita annual income as
625 determined by the United States Department of Commerce.

626 Section 19. Subsection (32) of section 403.703, Florida
627 Statutes, is amended to read:

628 403.703 Definitions.—As used in this part, the term:

629 (32) "Solid waste" means sludge unregulated under the
630 federal Clean Water Act or Clean Air Act, sludge from a waste
631 treatment works, water supply treatment plant, or air pollution
632 control facility, or garbage, rubbish, refuse, special waste, or
633 other discarded material, including solid, liquid, semisolid, or
634 contained gaseous material resulting from domestic, industrial,
635 commercial, mining, agricultural, or governmental operations.
636 Recovered materials as defined in subsection (24) are not solid
637 waste. The term does not include sludge from a waste treatment
638 works if the sludge is not discarded.

639 Section 20. Subsections (2) and (3) of section 403.707,
640 Florida Statutes, are amended to read:

641 403.707 Permits.—

642 (2) Except as provided in s. 403.722(6), a permit under
643 this section is not required for the following, ~~if the activity~~
644 ~~does not create a public nuisance or any condition adversely~~
645 ~~affecting the environment or public health and does not violate~~
646 ~~other state or local laws, ordinances, rules, regulations, or~~
647 ~~orders:~~

648 (a) Disposal by persons of solid waste resulting from their
649 own activities on their own property, if such waste is ordinary
650 household waste from their residential property or is rocks,



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651 soils, trees, tree remains, and other vegetative matter that
652 normally result from land development operations. Disposal of
653 materials that could create a public nuisance or adversely
654 affect the environment or public health, such as white goods;
655 automotive materials, such as batteries and tires; petroleum
656 products; pesticides; solvents; or hazardous substances, is not
657 covered under this exemption.

658 (b) Storage in containers by persons of solid waste
659 resulting from their own activities on their property, leased or
660 rented property, or property subject to a homeowners or
661 maintenance association for which the person contributes
662 association assessments, if the solid waste in such containers
663 is collected at least once a week.

664 (c) Disposal by persons of solid waste resulting from their
665 own activities on their property, if:

666 1. The environmental effects of such disposal on
667 groundwater and surface waters are:

668 a.1. Addressed or authorized by a site certification order
669 issued under part II or a permit issued by the department under
670 this chapter or rules adopted pursuant to this chapter; or

671 b.2. Addressed or authorized by, or exempted from the
672 requirement to obtain, a groundwater monitoring plan approved by
673 the department. As used in this sub-subparagraph, the term
674 "addressed by a groundwater monitoring plan" means the plan is
675 sufficient to monitor groundwater or surface water for
676 contaminants of concerns associated with the solid waste being
677 disposed. A groundwater monitoring plan can be demonstrated to
678 be sufficient irrespective of whether the groundwater monitoring
679 plan or disposal is referenced in a department permit or other



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680 authorization.

681 2. The disposal of solid waste takes place within an area
682 which is over a zone of discharge.

683
684 The disposal of solid waste pursuant to this paragraph does not
685 create liability under this chapter or chapter 376 for site
686 cleanup and the exceedance of soil cleanup target levels is not
687 a basis for enforcement or site cleanup.

688 (d) Disposal by persons of solid waste resulting from their
689 own activities on their own property, if such disposal occurred
690 prior to October 1, 1988.

691 (e) Disposal of solid waste resulting from normal farming
692 operations as defined by department rule. Polyethylene
693 agricultural plastic, damaged, nonsalvageable, untreated wood
694 pallets, and packing material that cannot be feasibly recycled,
695 which are used in connection with agricultural operations
696 related to the growing, harvesting, or maintenance of crops, may
697 be disposed of by open burning if a public nuisance or any
698 condition adversely affecting the environment or the public
699 health is not created by the open burning and state or federal
700 ambient air quality standards are not violated.

701 (f) The use of clean debris as fill material in any area.
702 However, this paragraph does not exempt any person from
703 obtaining any other required permits, and does not affect a
704 person's responsibility to dispose of clean debris appropriately
705 if it is not to be used as fill material.

706 (g) Compost operations that produce less than 50 cubic
707 yards of compost per year when the compost produced is used on
708 the property where the compost operation is located.



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709 (3) All applicable provisions of ss. 403.087 and 403.088,
710 relating to permits, apply to the control of solid waste
711 management facilities. Additionally, any permit issued to a
712 solid waste management facility that is designed with a leachate
713 control system meeting Department requirements shall be for a
714 term of 20 years, or should the applicant request, a lesser
715 number of years. Existing permit fees for qualifying solid waste
716 management facilities shall be prorated to the permit term
717 authorized by this section. This provision applies to all
718 qualifying solid waste management facilities that apply for an
719 operating or construction permit, or renew an existing operating
720 or construction permit, on or after July 1, 2012.

721 Section 21. Subsection (12) is added to section 403.814,
722 Florida Statutes, to read:

723 403.814 General permits; delegation.—

724 (12) A general permit shall be granted for the
725 construction, alteration, and maintenance of a surface water
726 management system serving a total project area of up to 10
727 acres. The construction of such a system may proceed without any
728 agency action by the department or water management district if:

729 (a) The total project area is less than 10 acres;

730 (b) The total project area involves less than 2 acres of
731 impervious surface;

732 (c) No activities will impact wetlands or other surface
733 waters;

734 (d) No activities are conducted in, on, or over wetlands or
735 other surface waters;

736 (e) Drainage facilities will not include pipes having
737 diameters greater than 24 inches, or the hydraulic equivalent,



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738 and will not use pumps in any manner;

739 (f) The project is not part of a larger common plan of
740 development or sale;

741 (g) The project does not:

742 1. Cause adverse water quantity or flooding impacts to
743 receiving water and adjacent lands;

744 2. Cause adverse impacts to existing surface water storage
745 and conveyance capabilities;

746 3. Cause a violation of state water quality standards; and

747 4. Cause an adverse impact to the maintenance of surface or
748 ground water levels or surface water flows established pursuant
749 to s. 373.042 or a Work of the District established pursuant to
750 s. 373.086; and

751 (h) The surface water management system design plans must
752 be signed and sealed by a registered professional and must be
753 capable, based on generally accepted engineering and scientific
754 principles, of being performed and functioning as proposed.

755 Section 22. Paragraph (u) is added to subsection (24) of
756 section 380.06, Florida Statutes, to read:

757 380.06 Developments of regional impact.—

758 (24) STATUTORY EXEMPTIONS.—

759 (u) Any proposed solid mineral mine and any proposed
760 addition to, expansion of, or change to an existing solid
761 mineral mine is exempt from the provisions of this section.
762 Proposed changes to any previously approved solid mineral mine
763 development-of-regional-impact development orders having vested
764 rights is not subject to further review or approval as a
765 development of regional impact or notice of proposed change
766 review or approval pursuant to subsection (19), except for those



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767 applications pending as of July 1, 2011, which shall be governed
768 by s. 380.115(2). Notwithstanding the foregoing, however,
769 pursuant to s. 380.115(1), previously approved solid mineral
770 mine development-of-regional-impact development orders shall
771 continue to enjoy vested rights and continue to be effective
772 unless rescinded by the developer. All local regulations of
773 proposed solid mineral mines and any proposed addition to,
774 expansion of , or change to an existing solid mineral mine shall
775 remain applicable.

776

777 If a use is exempt from review as a development of regional
778 impact under paragraphs (a)-(s), but will be part of a larger
779 project that is subject to review as a development of regional
780 impact, the impact of the exempt use must be included in the
781 review of the larger project, unless such exempt use involves a
782 development of regional impact that includes a landowner,
783 tenant, or user that has entered into a funding agreement with
784 the Office of Tourism, Trade, and Economic Development under the
785 Innovation Incentive Program and the agreement contemplates a
786 state award of at least \$50 million.

787 Section 23. Subsection (1) of section 380.0657, Florida
788 Statutes, is amended to read:

789 380.0657 Expedited permitting process for economic
790 development projects.-

791 (1) The Department of Environmental Protection and, as
792 appropriate, the water management districts created under
793 chapter 373 shall adopt programs to expedite the processing of
794 wetland resource and environmental resource permits for economic
795 development projects that have been identified by a municipality



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796 or county as meeting the definition of target industry
797 businesses under s. 288.106, or any inland multimodal facility,
798 receiving or sending cargo to or from Florida ports, with the
799 exception of those projects requiring approval by the Board of
800 Trustees of the Internal Improvement Trust Fund.

801 Section 24. Paragraph (a) of subsection (3) and subsections
802 (4), (5), (10), (11), (14), (15), and (18) of section 403.973,
803 Florida Statutes, are amended to read:

804 403.973 Expedited permitting; amendments to comprehensive
805 plans.—

806 (3)(a) The secretary shall direct the creation of regional
807 permit action teams for the purpose of expediting review of
808 permit applications and local comprehensive plan amendments
809 submitted by:

810 1. Businesses creating at least 50 jobs or a commercial or
811 industrial development project that will be occupied by
812 businesses that would individually or collectively create at
813 least 50 jobs; or

814 2. Businesses creating at least 25 jobs if the project is
815 located in an enterprise zone, or in a county having a
816 population of fewer than 75,000 or in a county having a
817 population of fewer than 125,000 which is contiguous to a county
818 having a population of fewer than 75,000, as determined by the
819 most recent decennial census, residing in incorporated and
820 unincorporated areas of the county.

821 (4) The regional teams shall be established through the
822 execution of a project-specific memoranda of agreement developed
823 and executed by the applicant and the secretary, with input
824 solicited from ~~the office and~~ the respective heads of the



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825 Department of Community Affairs, the Department of
826 Transportation and its district offices, the Department of
827 Agriculture and Consumer Services, the Fish and Wildlife
828 Conservation Commission, appropriate regional planning councils,
829 appropriate water management districts, and voluntarily
830 participating municipalities and counties. The memoranda of
831 agreement should also accommodate participation in this
832 expedited process by other local governments and federal
833 agencies as circumstances warrant.

834 (5) In order to facilitate local government's option to
835 participate in this expedited review process, the secretary
836 shall, in cooperation with local governments and participating
837 state agencies, create a standard form memorandum of agreement.
838 The standard form of the memorandum of agreement shall be used
839 only if the local government participates in the expedited
840 review process. In the absence of local government
841 participation, only the project-specific memorandum of agreement
842 executed pursuant to subsection (4) applies. A local government
843 shall hold a duly noticed public workshop to review and explain
844 to the public the expedited permitting process and the terms and
845 conditions of the standard form memorandum of agreement.

846 (10) The memoranda of agreement may provide for the waiver
847 or modification of procedural rules prescribing forms, fees,
848 procedures, or time limits for the review or processing of
849 permit applications under the jurisdiction of those agencies
850 that are members of the regional permit action team ~~party to the~~
851 ~~memoranda of agreement~~. Notwithstanding any other provision of
852 law to the contrary, a memorandum of agreement must to the
853 extent feasible provide for proceedings and hearings otherwise



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854 held separately ~~by the parties to the memorandum of agreement~~ to
855 be combined into one proceeding or held jointly and at one
856 location. Such waivers or modifications shall not be available
857 for permit applications governed by federally delegated or
858 approved permitting programs, the requirements of which would
859 prohibit, or be inconsistent with, such a waiver or
860 modification.

861 (11) The ~~standard form for~~ memoranda of agreement shall
862 include guidelines to be used in working with state, regional,
863 and local permitting authorities. Guidelines may include, but
864 are not limited to, the following:

865 (a) A central contact point for filing permit applications
866 and local comprehensive plan amendments and for obtaining
867 information on permit and local comprehensive plan amendment
868 requirements;

869 (b) Identification of the individual or individuals within
870 each respective agency who will be responsible for processing
871 the expedited permit application or local comprehensive plan
872 amendment for that agency;

873 (c) A mandatory preapplication review process to reduce
874 permitting conflicts by providing guidance to applicants
875 regarding the permits needed from each agency and governmental
876 entity, site planning and development, site suitability and
877 limitations, facility design, and steps the applicant can take
878 to ensure expeditious permit application and local comprehensive
879 plan amendment review. As a part of this process, the first
880 interagency meeting to discuss a project shall be held within 14
881 days after the secretary's determination that the project is
882 eligible for expedited review. Subsequent interagency meetings



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883 may be scheduled to accommodate the needs of participating local
884 governments that are unable to meet public notice requirements
885 for executing a memorandum of agreement within this timeframe.
886 This accommodation may not exceed 45 days from the secretary's
887 determination that the project is eligible for expedited review;

888 (d) The preparation of a single coordinated project
889 description form and checklist and an agreement by state and
890 regional agencies to reduce the burden on an applicant to
891 provide duplicate information to multiple agencies;

892 (e) Establishment of a process for the adoption and review
893 of any comprehensive plan amendment needed by any certified
894 project within 90 days after the submission of an application
895 for a comprehensive plan amendment. However, the memorandum of
896 agreement may not prevent affected persons as defined in s.
897 163.3184 from appealing or participating in this expedited plan
898 amendment process and any review or appeals of decisions made
899 under this paragraph; and

900 (f) Additional incentives for an applicant who proposes a
901 project that provides a net ecosystem benefit.

902 (14) (a) Challenges to state agency action in the expedited
903 permitting process for projects processed under this section are
904 subject to the summary hearing provisions of s. 120.574, except
905 that the administrative law judge's decision, as provided in s.
906 120.574(2) (f), shall be in the form of a recommended order and
907 shall not constitute the final action of the state agency. In
908 those proceedings where the action of only one agency of the
909 state other than the Department of Environmental Protection is
910 challenged, the agency of the state shall issue the final order
911 within 45 working days after receipt of the administrative law



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912 judge's recommended order, and the recommended order shall
913 inform the parties of their right to file exceptions or
914 responses to the recommended order in accordance with the
915 uniform rules of procedure pursuant to s. 120.54. In those
916 proceedings where the actions of more than one agency of the
917 state are challenged, the Governor shall issue the final order
918 within 45 working days after receipt of the administrative law
919 judge's recommended order, and the recommended order shall
920 inform the parties of their right to file exceptions or
921 responses to the recommended order in accordance with the
922 uniform rules of procedure pursuant to s. 120.54. For This
923 ~~paragraph does not apply to~~ the issuance of department licenses
924 required under any federally delegated or approved permit
925 program. ~~In such instances,~~ the department shall enter the final
926 order and not the Governor. The participating agencies of the
927 state may opt at the preliminary hearing conference to allow the
928 administrative law judge's decision to constitute the final
929 agency action. If a participating local government agrees to
930 participate in the summary hearing provisions of s. 120.574 for
931 purposes of review of local government comprehensive plan
932 amendments, s. 163.3184(9) and (10) apply.

933 (b) Projects identified in paragraph (3) (f) or challenges
934 to state agency action in the expedited permitting process for
935 establishment of a state-of-the-art biomedical research
936 institution and campus in this state by the grantee under s.
937 288.955 are subject to the same requirements as challenges
938 brought under paragraph (a), except that, notwithstanding s.
939 120.574, summary proceedings must be conducted within 30 days
940 after a party files the motion for summary hearing, regardless



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941 of whether the parties agree to the summary proceeding.

942 (15) The office, working with the agencies providing
943 cooperative assistance and input regarding the memoranda of
944 agreement, shall review sites proposed for the location of
945 facilities that the office has certified to be eligible for the
946 Innovation Incentive Program under s. 288.1089. Within 20 days
947 after the request for the review by the office, the agencies
948 shall provide to the office a statement as to each site's
949 necessary permits under local, state, and federal law and an
950 identification of significant permitting issues, which if
951 unresolved, may result in the denial of an agency permit or
952 approval or any significant delay caused by the permitting
953 process.

954 (18) The office, working with the Rural Economic
955 Development Initiative ~~and the agencies participating in the~~
956 ~~memoranda of agreement~~, shall provide technical assistance in
957 preparing permit applications and local comprehensive plan
958 amendments for counties having a population of fewer than 75,000
959 residents, or counties having fewer than 125,000 residents which
960 are contiguous to counties having fewer than 75,000 residents.
961 Additional assistance may include, but not be limited to,
962 guidance in land development regulations and permitting
963 processes, working cooperatively with state, regional, and local
964 entities to identify areas within these counties which may be
965 suitable or adaptable for preclearance review of specified types
966 of land uses and other activities requiring permits.

967 Section 25. Subsection (10) of section 163.3180, Florida
968 Statutes, is amended to read:

969 163.3180 Concurrency.—



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970 (10) (a) Except in transportation concurrency exception
971 areas, with regard to roadway facilities on the Strategic
972 Intermodal System designated in accordance with s. 339.63, local
973 governments shall adopt the level-of-service standard
974 established by the Department of Transportation by rule.
975 However, if the Office of Tourism, Trade, and Economic
976 Development concurs in writing with the local government that
977 the proposed development is for a qualified job creation project
978 under s. 288.0656 or s. 403.973, the affected local government,
979 after consulting with the Department of Transportation, may
980 provide for a waiver of transportation concurrency for the
981 project. For all other roads on the State Highway System, local
982 governments shall establish an adequate level-of-service
983 standard that need not be consistent with any level-of-service
984 standard established by the Department of Transportation. In
985 establishing adequate level-of-service standards for any
986 arterial roads, or collector roads as appropriate, which
987 traverse multiple jurisdictions, local governments shall
988 consider compatibility with the roadway facility's adopted
989 level-of-service standards in adjacent jurisdictions. Each local
990 government within a county shall use a professionally accepted
991 methodology for measuring impacts on transportation facilities
992 for the purposes of implementing its concurrency management
993 system. Counties are encouraged to coordinate with adjacent
994 counties, and local governments within a county are encouraged
995 to coordinate, for the purpose of using common methodologies for
996 measuring impacts on transportation facilities for the purpose
997 of implementing their concurrency management systems.

998 (b) There shall be a limited exemption from the Strategic



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999 Intermodal System adopted level-of-service standards for new or
1000 redevelopment projects consistent with the local comprehensive
1001 plan as inland multimodal facilities receiving or sending cargo
1002 for distribution and providing cargo storage, consolidation,
1003 repackaging, and transfer of goods, and which may, if developed
1004 as proposed, include other intermodal terminals, related
1005 transportation facilities, warehousing and distribution
1006 facilities, and associated office space, light industrial,
1007 manufacturing, and assembly uses. The limited exemption applies
1008 if the project meets all of the following criteria:

1009 1. The project will not cause the adopted level-of-service
1010 standards for the Strategic Intermodal System facilities to be
1011 exceeded by more than 150 percent within the first 5 years of
1012 the project's development.

1013 2. The project, upon completion, would result in the
1014 creation of at least 50 full-time jobs.

1015 3. The project is compatible with existing and planned
1016 adjacent land uses.

1017 4. The project is consistent with local and regional
1018 economic development goals or plans.

1019 5. The project is proximate to regionally significant road
1020 and rail transportation facilities.

1021 6. The project is proximate to a community having an
1022 unemployment rate, as of the date of the development order
1023 application, which is 10 percent or more above the statewide
1024 reported average.

1025 Section 26. Subsections (1) and (2), paragraph (c) of
1026 subsection (3), and subsection (4) of section 373.4137, Florida
1027 Statutes, are amended to read:



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1028 373.4137 Mitigation requirements for specified
1029 transportation projects.—

1030 (1) The Legislature finds that environmental mitigation for
1031 the impact of transportation projects proposed by the Department
1032 of Transportation or a transportation authority established
1033 pursuant to chapter 348 or chapter 349 can be more effectively
1034 achieved by regional, long-range mitigation planning rather than
1035 on a project-by-project basis. It is the intent of the
1036 Legislature that mitigation to offset the adverse effects of
1037 these transportation projects be funded by the Department of
1038 Transportation and be carried out by the water management
1039 districts, through including the use of privately owned
1040 mitigation banks where available or, if a privately owned
1041 mitigation bank is not available, through any other mitigation
1042 options that satisfy state and federal requirements established
1043 pursuant to this part.

1044 (2) Environmental impact inventories for transportation
1045 projects proposed by the Department of Transportation or a
1046 transportation authority established pursuant to chapter 348 or
1047 chapter 349 shall be developed as follows:

1048 (a) By July 1 of each year, the Department of
1049 Transportation or a transportation authority established
1050 pursuant to chapter 348 or chapter 349 which chooses to
1051 participate in this program shall submit to the water management
1052 districts a list copy of its projects in the adopted work
1053 program and an environmental impact inventory of habitats
1054 addressed in the rules adopted pursuant to this part and s. 404
1055 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
1056 by its plan of construction for transportation projects in the



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1057 next 3 years of the tentative work program. The Department of
1058 Transportation or a transportation authority established
1059 pursuant to chapter 348 or chapter 349 may also include in its
1060 environmental impact inventory the habitat impacts of any future
1061 transportation project. The Department of Transportation and
1062 each transportation authority established pursuant to chapter
1063 348 or chapter 349 may fund any mitigation activities for future
1064 projects using current year funds.

1065 (b) The environmental impact inventory shall include a
1066 description of these habitat impacts, including their location,
1067 acreage, and type; state water quality classification of
1068 impacted wetlands and other surface waters; any other state or
1069 regional designations for these habitats; and a list ~~survey~~ of
1070 threatened species, endangered species, and species of special
1071 concern affected by the proposed project.

1072 (3)

1073 (c) Except for current mitigation projects in the
1074 monitoring and maintenance phase and except as allowed by
1075 paragraph (d), the water management districts may request a
1076 transfer of funds from an escrow account no sooner than 30 days
1077 prior to the date the funds are needed to pay for activities
1078 associated with development or implementation of the approved
1079 mitigation plan described in subsection (4) for the current
1080 fiscal year, including, but not limited to, design, engineering,
1081 production, and staff support. Actual conceptual plan
1082 preparation costs incurred before plan approval may be submitted
1083 to the Department of Transportation or the appropriate
1084 transportation authority each year with the plan. The conceptual
1085 plan preparation costs of each water management district will be



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1086 paid from mitigation funds associated with the environmental
1087 impact inventory for the current year. The amount transferred to
1088 the escrow accounts each year by the Department of
1089 Transportation and participating transportation authorities
1090 established pursuant to chapter 348 or chapter 349 shall
1091 correspond to a cost per acre of \$75,000 multiplied by the
1092 projected acres of impact identified in the environmental impact
1093 inventory described in subsection (2). However, the \$75,000 cost
1094 per acre does not constitute an admission against interest by
1095 the state or its subdivisions nor is the cost admissible as
1096 evidence of full compensation for any property acquired by
1097 eminent domain or through inverse condemnation. Each July 1, the
1098 cost per acre shall be adjusted by the percentage change in the
1099 average of the Consumer Price Index issued by the United States
1100 Department of Labor for the most recent 12-month period ending
1101 September 30, compared to the base year average, which is the
1102 average for the 12-month period ending September 30, 1996. Each
1103 quarter, the projected acreage of impact shall be reconciled
1104 with the acreage of impact of projects as permitted, including
1105 permit modifications, pursuant to this part and s. 404 of the
1106 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer
1107 of funds shall be adjusted accordingly to reflect the acreage of
1108 impacts as permitted. The Department of Transportation and
1109 participating transportation authorities established pursuant to
1110 chapter 348 or chapter 349 are authorized to transfer such funds
1111 from the escrow accounts to the water management districts to
1112 carry out the mitigation programs. Environmental mitigation
1113 funds that are identified or maintained in an escrow account for
1114 the benefit of a water management district may be released if



1115 the associated transportation project is excluded in whole or
1116 part from the mitigation plan. For a mitigation project that is
1117 in the maintenance and monitoring phase, the water management
1118 district may request and receive a one-time payment based on the
1119 project's expected future maintenance and monitoring costs. Upon
1120 disbursement of the final maintenance and monitoring payment,
1121 the department or the participating transportation authorities'
1122 obligation will be satisfied, the water management district will
1123 have continuing responsibility for the mitigation project, and
1124 the escrow account for the project established by the Department
1125 of Transportation or the participating transportation authority
1126 may be closed. Any interest earned on these disbursed funds
1127 shall remain with the water management district and must be used
1128 as authorized under this section.

1129 (4) Prior to March 1 of each year, each water management
1130 district, in consultation with the Department of Environmental
1131 Protection, the United States Army Corps of Engineers, the
1132 Department of Transportation, participating transportation
1133 authorities established pursuant to chapter 348 or chapter 349,
1134 and other appropriate federal, state, and local governments, and
1135 other interested parties, including entities operating
1136 mitigation banks, shall develop a plan for the primary purpose
1137 of complying with the mitigation requirements adopted pursuant
1138 to this part and 33 U.S.C. s. 1344. In developing such plans,
1139 private mitigation banks shall be used when available, and, when
1140 a mitigation bank is not available, the districts shall utilize
1141 sound ecosystem management practices to address significant
1142 water resource needs and shall focus on activities of the
1143 Department of Environmental Protection and the water management



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1144 districts, such as surface water improvement and management
1145 (SWIM) projects and lands identified for potential acquisition
1146 for preservation, restoration or enhancement, and the control of
1147 invasive and exotic plants in wetlands and other surface waters,
1148 to the extent that such activities comply with the mitigation
1149 requirements adopted under this part and 33 U.S.C. s. 1344. In
1150 determining the activities to be included in such plans, the
1151 districts shall ~~also consider the purchase of~~ credits from
1152 public or private mitigation banks permitted under s. 373.4136
1153 and associated federal authorization and shall include such
1154 purchase as a part of the mitigation plan when such purchase
1155 would offset the impact of the transportation project, ~~provide~~
1156 ~~equal benefits to the water resources than other mitigation~~
1157 ~~options being considered, and provide the most cost-effective~~
1158 ~~mitigation option.~~ The mitigation plan shall be submitted to the
1159 water management district governing board, or its designee, for
1160 review and approval. At least 14 days before ~~prior to~~ approval,
1161 the water management district shall provide a copy of the draft
1162 mitigation plan to any person who has requested a copy.

1163 (a) For each transportation project with a funding request
1164 for the next fiscal year, the mitigation plan must include a
1165 brief explanation of why a mitigation bank was or was not chosen
1166 as a mitigation option, including an estimation of identifiable
1167 costs of the mitigation bank and nonbank options to the extent
1168 practicable.

1169 (b) Specific projects may be excluded from the mitigation
1170 plan, in whole or in part, and shall not be subject to this
1171 section upon the election agreement of the Department of
1172 Transportation, ~~or~~ a transportation authority if applicable, or



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1173 ~~and the appropriate water management district that the inclusion~~
1174 ~~of such projects would hamper the efficiency or timeliness of~~
1175 ~~the mitigation planning and permitting process. The water~~
1176 ~~management district may choose to exclude a project in whole or~~
1177 ~~in part if the district is unable to identify mitigation that~~
1178 ~~would offset impacts of the project.~~

1179 Section 27. Subsections (2) and (3), paragraph (a) of
1180 subsection (4), and paragraph (a) of subsection (6) of section
1181 373.41492, Florida Statutes, are amended to read:

1182 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
1183 mitigation for mining activities within the Miami-Dade County
1184 Lake Belt.—

1185 (2) To provide for the mitigation of wetland resources lost
1186 to mining activities within the Miami-Dade County Lake Belt
1187 Plan, effective October 1, 1999, a mitigation fee is imposed on
1188 each ton of limerock and sand extracted by any person who
1189 engages in the business of extracting limerock or sand from
1190 within the Miami-Dade County Lake Belt Area and the east one-
1191 half of sections 24 and 25 and all of sections 35 and 36,
1192 Township 53 South, Range 39 East. The mitigation fee is imposed
1193 for each ton of limerock and sand sold from within the
1194 properties where the fee applies in raw, processed, or
1195 manufactured form, including, but not limited to, sized
1196 aggregate, asphalt, cement, concrete, and other limerock and
1197 concrete products. The mitigation fee imposed by this subsection
1198 for each ton of limerock and sand sold shall be 12 cents per ton
1199 beginning January 1, 2007; 18 cents per ton beginning January 1,
1200 2008; 24 cents per ton beginning January 1, 2009; and 45 cents
1201 per ton beginning close of business December 31, 2011. To pay



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1202 for seepage mitigation projects, including hydrological
1203 structures, as authorized in an environmental resource permit
1204 issued by the department for mining activities within the Miami-
1205 Dade County Lake Belt Area, and to upgrade a water treatment
1206 plant that treats water coming from the Northwest Wellfield in
1207 Miami-Dade County, a water treatment plant upgrade fee is
1208 imposed within the same Lake Belt Area subject to the mitigation
1209 fee and upon the same kind of mined limerock and sand subject to
1210 the mitigation fee. The water treatment plant upgrade fee
1211 imposed by this subsection for each ton of limerock and sand
1212 sold shall be 15 cents per ton beginning on January 1, 2007, and
1213 the collection of this fee shall cease once the total amount of
1214 proceeds collected for this fee reaches the amount of the actual
1215 moneys necessary to design and construct the water treatment
1216 plant upgrade, as determined in an open, public solicitation
1217 process. Any limerock or sand that is used within the mine from
1218 which the limerock or sand is extracted is exempt from the fees.
1219 The amount of the mitigation fee and the water treatment plant
1220 upgrade fee imposed under this section must be stated separately
1221 on the invoice provided to the purchaser of the limerock or sand
1222 product from the limerock or sand miner, or its subsidiary or
1223 affiliate, for which the fee or fees apply. The limerock or sand
1224 miner, or its subsidiary or affiliate, who sells the limerock or
1225 sand product shall collect the mitigation fee and the water
1226 treatment plant upgrade fee and forward the proceeds of the fees
1227 to the Department of Revenue on or before the 20th day of the
1228 month following the calendar month in which the sale occurs. As
1229 used in this section, the term "proceeds of the fee" means all
1230 funds collected and received by the Department of Revenue under



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1231 this section, including interest and penalties on delinquent
1232 fees. The amount deducted for administrative costs may not
1233 exceed 3 percent of the total revenues collected under this
1234 section and may equal only those administrative costs reasonably
1235 attributable to the fees.

1236 (3) The mitigation fee and the water treatment plant
1237 upgrade fee imposed by this section must be reported to the
1238 Department of Revenue. Payment of the mitigation and the water
1239 treatment plant upgrade fees must be accompanied by a form
1240 prescribed by the Department of Revenue. The proceeds of the
1241 mitigation fee, less administrative costs, must be transferred
1242 by the Department of Revenue to the South Florida Water
1243 Management District and deposited into the Lake Belt Mitigation
1244 Trust Fund. Beginning January 1, 2012, and ending December 31,
1245 2017, or upon issuance of water quality certification by the
1246 department for mining activities within Phase II of the Miami-
1247 Dade County Lake Belt Plan, whichever occurs later, the proceeds
1248 of the water treatment plant upgrade fee, less administrative
1249 costs, must be transferred by the Department of Revenue to the
1250 South Florida Water Management District and deposited into the
1251 Lake Belt Mitigation Trust Fund. Beginning January 1, 2018, the
1252 proceeds of the water treatment plant upgrade fee, less
1253 administrative costs, must be transferred by the Department of
1254 Revenue to a trust fund established by Miami-Dade County, for
1255 the sole purpose authorized by paragraph (6) (a). ~~As used in this~~
1256 ~~section, the term "proceeds of the fee" means all funds~~
1257 ~~collected and received by the Department of Revenue under this~~
1258 ~~section, including interest and penalties on delinquent fees.~~
1259 ~~The amount deducted for administrative costs may not exceed 3~~



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1260 ~~percent of the total revenues collected under this section and~~
1261 ~~may equal only those administrative costs reasonably~~
1262 ~~attributable to the fees.~~

1263 (4) (a) The Department of Revenue shall administer, collect,
1264 and enforce the mitigation and water treatment plant upgrade
1265 fees authorized under this section in accordance with the
1266 procedures used to administer, collect, and enforce the general
1267 sales tax imposed under chapter 212. The provisions of chapter
1268 212 with respect to the authority of the Department of Revenue
1269 to audit and make assessments, the keeping of books and records,
1270 and the interest and penalties imposed on delinquent fees apply
1271 to this section. The fees may not be included in computing
1272 estimated taxes under s. 212.11, and the dealer's credit for
1273 collecting taxes or fees provided for in s. 212.12 does not
1274 apply to the fees imposed by this section.

1275 (6) (a) The proceeds of the mitigation fee must be used to
1276 conduct mitigation activities that are appropriate to offset the
1277 loss of the value and functions of wetlands as a result of
1278 mining activities and must be used in a manner consistent with
1279 the recommendations contained in the reports submitted to the
1280 Legislature by the Miami-Dade County Lake Belt Plan
1281 Implementation Committee and adopted under s. 373.4149. Such
1282 mitigation may include the purchase, enhancement, restoration,
1283 and management of wetlands and uplands, the purchase of
1284 mitigation credit from a permitted mitigation bank, and any
1285 structural modifications to the existing drainage system to
1286 enhance the hydrology of the Miami-Dade County Lake Belt Area.
1287 Funds may also be used to reimburse other funding sources,
1288 including the Save Our Rivers Land Acquisition Program, the



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1289 Internal Improvement Trust Fund, the South Florida Water
1290 Management District, and Miami-Dade County, for the purchase of
1291 lands that were acquired in areas appropriate for mitigation due
1292 to rock mining and to reimburse governmental agencies that
1293 exchanged land under s. 373.4149 for mitigation due to rock
1294 mining. The proceeds of the water treatment plant upgrade fee
1295 that are deposited into the Lake Belt Mitigation Trust Fund
1296 shall be used solely to pay for seepage mitigation projects,
1297 including groundwater or surface water management structures, as
1298 authorized in an environmental resource permit issued by the
1299 department for mining activities within the Miami-Dade County
1300 Lake Belt Area. The proceeds of the water treatment plant
1301 upgrade fee that are transferred to a trust fund established by
1302 Miami-Dade County shall be used to upgrade a water treatment
1303 plant that treats water coming from the Northwest Wellfield in
1304 Miami-Dade County. As used in this section, the terms "upgrade a
1305 water treatment plant" or "water treatment plant upgrade" means
1306 those works necessary to treat or filter a surface water source
1307 or supply or both.

1308 Section 28. Subsection (5) is added to section 526.203,
1309 Florida Statutes, to read:

1310 526.203 Renewable fuel standard.—

1311 (5) This section does not prohibit the sale of unblended
1312 fuels for the uses exempted under subsection (3).

1313 Section 29. Subsection (18) of section 373.414, is amended
1314 to read:

1315 (18) The department and each water management district
1316 responsible for implementation of the environmental resource
1317 permitting program shall develop a uniform mitigation assessment



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1318 method for wetlands and other surface waters. ~~The department~~
1319 ~~shall adopt the uniform mitigation assessment method by rule no~~
1320 ~~later than July 31, 2002.~~ The rule shall provide an exclusive,
1321 uniform and consistent process for determining the amount of
1322 mitigation required to offset impacts to wetlands and other
1323 surface waters, and, once effective, shall supersede all rules,
1324 ordinances, and variance procedures from ordinances that
1325 determine the amount of mitigation needed to offset such
1326 impacts. Once the department adopts the uniform mitigation
1327 assessment method by rule, the uniform mitigation assessment
1328 method shall be binding on the department, the water management
1329 districts, local governments, and any other governmental
1330 agencies and shall be the sole means to determine the amount of
1331 mitigation needed to offset adverse impacts to wetlands and
1332 other surface waters and to award and deduct mitigation bank
1333 credits. A water management district and any other governmental
1334 agency subject to chapter 120 may apply the uniform mitigation
1335 assessment method without the need to adopt it pursuant to s.
1336 120.54. It shall be a goal of the department and water
1337 management districts that the uniform mitigation assessment
1338 method developed be practicable for use within the timeframes
1339 provided in the permitting process and result in a consistent
1340 process for determining mitigation requirements. It shall be
1341 recognized that any such method shall require the application of
1342 reasonable scientific judgment. The uniform mitigation
1343 assessment method must determine the value of functions provided
1344 by wetlands and other surface waters considering the current
1345 conditions of these areas, utilization by fish and wildlife,
1346 location, uniqueness, and hydrologic connection, ~~and, when~~



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1347 ~~applied to mitigation banks, the factors listed in s.~~
1348 373.4136(4). The uniform mitigation assessment method shall also
1349 account for the expected time-lag associated with offsetting
1350 impacts and the degree of risk associated with the proposed
1351 mitigation. The uniform mitigation assessment method shall
1352 account for different ecological communities in different areas
1353 of the state. In developing the uniform mitigation assessment
1354 method, the department and water management districts shall
1355 consult with approved local programs under s. 403.182 which have
1356 an established mitigation program for wetlands or other surface
1357 waters. The department and water management districts shall
1358 consider the recommendations submitted by such approved local
1359 programs, including any recommendations relating to the adoption
1360 by the department and water management districts of any uniform
1361 mitigation methodology that has been adopted and used by an
1362 approved local program in its established mitigation program for
1363 wetlands or other surface waters. Environmental resource
1364 permitting rules may establish categories of permits or
1365 thresholds for minor impacts under which the use of the uniform
1366 mitigation assessment method will not be required. The
1367 application of the uniform mitigation assessment method is not
1368 subject to s. 70.001. In the event the rule establishing the
1369 uniform mitigation assessment method is deemed to be invalid,
1370 the applicable rules related to establishing needed mitigation
1371 in existence prior to the adoption of the uniform mitigation
1372 assessment method, including those adopted by a county which is
1373 an approved local program under s. 403.182, and the method
1374 described in paragraph (b) for existing mitigation banks, shall
1375 be authorized for use by the department, water management



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1376 districts, local governments, and other state agencies.

1377 (a) In developing the uniform mitigation assessment method,
1378 the department shall seek input from the United States Army
1379 Corps of Engineers in order to promote consistency in the
1380 mitigation assessment methods used by the state and federal
1381 permitting programs.

1382 (b) An entity which has received a mitigation bank permit
1383 prior to the adoption of the uniform mitigation assessment
1384 method shall have impact sites assessed, for the purpose of
1385 deducting bank credits, using the credit assessment method,
1386 including any functional assessment methodology, which was in
1387 place when the bank was permitted; unless the entity elects to
1388 have its credits redetermined, and thereafter have its credits
1389 deducted, using the uniform mitigation assessment method.

1390 (c) The department shall be responsible for ensure
1391 statewide coordination and consistency in the interpretation and
1392 application of the uniform mitigation assessment rule by
1393 providing programmatic training and guidance to staff of the
1394 department, water management districts, and local governments.
1395 To ensure that the uniform mitigation assessment rule is
1396 interpreted and applied uniformly, any interpretation or
1397 application of the rule by any agency or local government that
1398 differs from the department's interpretation or application of
1399 the rule shall be incorrect and invalid. The department's
1400 interpretation, application and implementation of the uniform
1401 mitigation assessment rule shall be the only acceptable method.

1402 (d) Applicants shall submit the information needed to
1403 perform the assessment required under the uniform mitigation
1404 assessment rule, and may submit the qualitative characterization



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1405 and quantitative assessment for each assessment area specified
1406 by the rule. The reviewing agency shall review that information
1407 and notify the applicant of any inadequacy in the information or
1408 application of the assessment method.

1409 (e) When conducting qualitative characterization of
1410 artificial wetlands and other surface waters, such as borrow
1411 pits, ditches, and canals under the uniform mitigation
1412 assessment rule, the native community type to which it is most
1413 analogous in function shall be used as a reference. For wetlands
1414 or other surface waters that have been altered from their native
1415 community type, the historic community type at that location
1416 shall be used as a reference, unless the alteration has been of
1417 such a degree and extent that a clearly defined different native
1418 community type is now present and self sustaining.

1419 (f) When conducting qualitative characterization of upland
1420 mitigation assessment areas, the characterization shall include
1421 functions that the upland assessment area provides to the fish
1422 and wildlife of the associated wetland or other surface waters.
1423 These functions shall be considered when scoring the upland
1424 assessment area for preservation, enhancement, or restoration.
1425 Any increase in these functions resulting from activities in an
1426 upland mitigation assessment area shall be accounted for in the
1427 upland assessment area scoring.

1428 (g) Preservation mitigation, as used the uniform mitigation
1429 assessment method, means the protection of important wetland,
1430 other surface water or upland ecosystems, predominantly in their
1431 existing condition and absent restoration, creation or
1432 enhancement, from adverse impacts by placing a conservation
1433 easement or other comparable land use restriction over the



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1434 property or by donation of fee simple interest in the property.
1435 Preservation may include a management plan for perpetual
1436 protection of the area. The preservation adjustment factor set
1437 forth in rule 62-345.500(3), Florida Administrative Code, shall
1438 only apply to preservation mitigation.

1439 (h) When assessing a preservation mitigation assessment
1440 area under the uniform mitigation assessment method the
1441 following shall apply:

1442 1. "Without preservation" shall consider the reasonably
1443 anticipated impacts to the assessment area, assuming the area is
1444 not preserved, and the temporary or permanent nature of those
1445 impacts, considering the protection provided by existing
1446 easements, regulations and land use restrictions, without the
1447 need for zoning or comprehensive plan changes.

1448 2. Each of the considerations of the preservation
1449 adjustment factor specified in rule 62-345.500(3)(a), Florida
1450 Administrative Code shall be equally weighted and scored on a
1451 scale from 0 (no value) to 0.2 (optimal value). In addition, the
1452 minimum preservation adjustment factor shall be 0.2.

1453 3. Assessment areas shall not be delineated based upon the
1454 likely activities that would occur in the "without preservation"
1455 condition.

1456 (i) When assessing an upland preservation mitigation
1457 assessment area pursuant to rule 62-345.500(2)(a), Florida
1458 Administrative Code, it shall be recognized that an increase in
1459 location and landscape support can occur when the community
1460 structure score is a number other than zero in the without
1461 mitigation condition.

1462 (j) When scoring the "with mitigation" assessment as used



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1463 in rule 62-345.500(1)(b), Florida Administrative Code, for
1464 assessment areas involving enhancement, restoration or creation
1465 activities and that are also proposed to be placed under a
1466 conservation easement or other similar land protection
1467 mechanism, the with mitigation score shall reflect the combined
1468 preservation and enhancement/restoration/creation value of the
1469 specified assessment area, and the preservation adjustment
1470 factor set forth in rule 62-345.500(3), Florida Administrative
1471 Code, shall not apply to such "with mitigation" assessment.

1472 (k) Any entity holding a mitigation bank permit that was
1473 evaluated under the uniform mitigation assessment rule prior to
1474 the effective date of paragraphs (c) through (j) above, may
1475 submit a permit modification request to the relevant permitting
1476 agency to have such mitigation bank reassessed pursuant to the
1477 provisions set forth in this section, and the relevant
1478 permitting agency shall reassess such mitigation bank, if such
1479 request is filed with that agency no later than September 30,
1480 2011.

1481 (l) The department shall amend the uniform mitigation
1482 assessment rule as necessary to incorporate the provisions of
1483 paragraphs (c) through (j) above, including revising the
1484 worksheet portions of rule.

1485 Section 30. Subsection (4) of section 373.4136, Florida
1486 Statutes, is amended to read:

1487 373.4136 Establishment and operation of mitigation banks.—

1488 (4) MITIGATION CREDITS.—After evaluating the information
1489 submitted by the applicant for a mitigation bank permit and
1490 assessing the proposed mitigation bank pursuant to the criteria
1491 in this section, the department or water management district



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1492 shall award a number of mitigation credits to a proposed
1493 mitigation bank or phase of such mitigation bank. An entity
1494 establishing and operating a mitigation bank may apply to modify
1495 the mitigation bank permit to seek the award of additional
1496 mitigation credits if the mitigation bank results in an
1497 additional increase in ecological value over the value
1498 contemplated at the time of the original permit issuance, or the
1499 most recent modification thereto involving the number of credits
1500 awarded. The number of credits awarded shall be based on the
1501 degree of improvement in ecological value expected to result
1502 from the establishment and operation of the mitigation bank as
1503 determined using the uniform mitigation assessment method
1504 adopted pursuant to s. 373.414(18) for mitigation bank permit
1505 applications that are subject to this method. ~~a functional~~
1506 ~~assessment methodology.~~ For mitigation bank permit applications
1507 not subject to the uniform mitigation assessment method, ~~in~~
1508 ~~determining the degree of improvement in ecological value,~~ each
1509 of the following factors, at a minimum, shall be evaluated to
1510 determine the degree of improvement in ecological value:

1511 (a) The extent to which target hydrologic regimes can be
1512 achieved and maintained.

1513 (b) The extent to which management activities promote
1514 natural ecological conditions, such as natural fire patterns.

1515 (c) The proximity of the mitigation bank to areas with
1516 regionally significant ecological resources or habitats, such as
1517 national or state parks, Outstanding National Resource Waters
1518 and associated watersheds, Outstanding Florida Waters and
1519 associated watersheds, and lands acquired through governmental
1520 or nonprofit land acquisition programs for environmental



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1521 conservation; and the extent to which the mitigation bank
1522 establishes corridors for fish, wildlife, or listed species to
1523 those resources or habitats.

1524 (d) The quality and quantity of wetland or upland
1525 restoration, enhancement, preservation, or creation.

1526 (e) The ecological and hydrological relationship between
1527 wetlands and uplands in the mitigation bank.

1528 (f) The extent to which the mitigation bank provides
1529 habitat for fish and wildlife, especially habitat for species
1530 listed as threatened, endangered, or of special concern, or
1531 provides habitats that are unique for that mitigation service
1532 area.

1533 (g) The extent to which the lands that are to be preserved
1534 are already protected by existing state, local, or federal
1535 regulations or land use restrictions.

1536 (h) The extent to which lands to be preserved would be
1537 adversely affected if they were not preserved.

1538 (i) Any special designation or classification of the
1539 affected waters and lands.

1540 Section 31. Section 604.50, Florida Statutes, is amended to
1541 read:

1542 604.50 Nonresidential farm buildings and farm fences.—

1543 (1) Notwithstanding any other law to the contrary, any
1544 nonresidential farm building or farm fence is exempt from the
1545 Florida Building Code and any county or municipal building code
1546 or fee, except for code provisions implementing local, state, or
1547 federal floodplain management regulations.

1548 (2) As used in ~~For purposes of~~ this section, the term:

1549 (a) "Nonresidential farm building" means any temporary or



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1550 permanent building or support structure that is classified as a
1551 nonresidential farm building on a farm under s. 553.73(9)(c) or
1552 that is used primarily for agricultural purposes, is located on
1553 a farm that is not used as a residential dwelling, and is
1554 located on land that is an integral part of a farm operation or
1555 is classified as agricultural land under s. 193.461, and is not
1556 intended to be used as a residential dwelling. The term may
1557 include, but is not limited to, a barn, greenhouse, shade house,
1558 farm office, storage building, or poultry house.

1559 (b) The term "Farm" has the same meaning as provided
1560 defined in s. 823.14.

1561 Section 32. Installation of fuel tank upgrades to secondary
1562 containment systems shall be completed by the deadlines
1563 specified in rule 62-761.510, Florida Administrative Code, Table
1564 UST. However, and notwithstanding any agreements to the
1565 contrary, any fuel service station that changed ownership
1566 interest through a bona fide sale of the property between
1567 January 1, 2009 and December 31, 2009 shall not be required to
1568 complete the upgrades described in rule 62-761.510, Florida
1569 Administrative Code, Table UST, until December 31, 2012.

1570 Section 33. This act shall take effect July 1, 2011.

1571
1572 ===== T I T L E A M E N D M E N T =====

1573 And the title is amended as follows:

1574 Delete everything before the enacting clause
1575 and insert:

1576 A bill to be entitled
1577 An act relating to environmental permitting; amending
1578 s.120.569, F.S.; providing that a nonapplicant who



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1579 petitions to challenge an agency's issuance of a
1580 license, permit, or conceptual approval in certain
1581 circumstances has the burden of ultimate persuasion
1582 and the burden of going forward with evidence;
1583 creating s. 125.0112, F.S.; providing that the
1584 construction and operation of a biofuel processing
1585 facility or renewable energy generating facility and
1586 the cultivation of bioenergy by a local government is
1587 a valid and permitted land use; providing an
1588 exception; requiring expedited review of such
1589 facilities; providing that such facilities are
1590 eligible for the alternative state review process;
1591 amending s. 125.022, F.S.; prohibiting a county from
1592 requiring an applicant to obtain a permit or approval
1593 from another state or federal agency as a condition of
1594 approving a development permit under certain
1595 conditions; authorizing a county to attach certain
1596 disclaimers to the issuance of a development permit;
1597 creating s. 161.032, F.S.; requiring that the
1598 Department of Environmental Protection review an
1599 application for certain permits under the Beach and
1600 Shore Preservation Act and request additional
1601 information within a specified time; requiring that
1602 the department proceed to process the application if
1603 the applicant believes that a request for additional
1604 information is not authorized by law or rule;
1605 extending the period for an applicant to timely submit
1606 additional information, notwithstanding certain
1607 provisions of the Administrative Procedure Act;



1608 amending s. 166.033, F.S.; prohibiting a municipality
1609 from requiring an applicant to obtain a permit or
1610 approval from another state or federal agency as a
1611 condition of approving a development permit under
1612 certain conditions; authorizing a county to attach
1613 certain disclaimers to the issuance of a development
1614 permit; creating s. 166.0447, F.S.; providing that the
1615 construction and operation of a biofuel processing
1616 facility or renewable energy generating facility and
1617 the cultivation of bioenergy is a valid and permitted
1618 land use within the unincorporated area of a
1619 municipality; providing an exception; prohibiting any
1620 requirement that the owner or operator of such a
1621 facility obtain comprehensive plan amendments, use
1622 permits, waivers, or variances, or pay any fee in
1623 excess of a specified amount; amending s. 258.397,
1624 F.S.; providing an exemption from a showing of extreme
1625 hardship for municipal applicants proposing certain
1626 projects; providing an exception for the creation of
1627 public waterfront promenades; amending s. 373.026,
1628 F.S.; requiring the Department of Environmental
1629 Protection to expand its use of Internet-based self-
1630 certification services for exemptions and permits
1631 issued by the department and water management
1632 districts; amending s. 373.4141, F.S.; requiring that
1633 a request by the department or a water management
1634 district that an applicant provide additional
1635 information be accompanied by the signature of
1636 specified officials of the department or district;



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1637 reducing the time within which the department or
1638 district must approve or deny a permit application;
1639 amending s. 373.4144, F.S.; providing legislative
1640 intent with respect to the coordination of regulatory
1641 duties among specified state and federal agencies;
1642 requiring that the department report annually to the
1643 Legislature on efforts to expand the state
1644 programmatic general permit or regional general
1645 permits; providing for a voluntary state programmatic
1646 general permit for certain dredge and fill activities;
1647 amending s. 373.441, F.S.; requiring that certain
1648 counties or municipalities apply by a specified date
1649 to the department or water management district for
1650 authority to require certain permits; providing that
1651 following such delegation, the department or district
1652 may not regulate activities that are subject to the
1653 delegation; clarifying the authority of local
1654 governments to adopt pollution control programs under
1655 certain conditions; amending s. 376.30715, F.S.;
1656 providing that the transfer of a contaminated site
1657 from an owner to a child or corporate entity does not
1658 disqualify the site from the innocent victim petroleum
1659 storage system restoration financial assistance
1660 program; authorizing certain applicants to reapply for
1661 financial assistance; amending s. 403.061, F.S.;
1662 requiring the Department of Environmental Protection
1663 to establish reasonable zones of mixing for discharges
1664 into specified waters; providing that certain
1665 discharges do not create liability for site cleanup;



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1666 providing that exceedance of soil cleanup target
1667 levels is not a basis for enforcement or cleanup;
1668 creating s. 403.0874, F.S.; providing a short title;
1669 providing legislative findings and intent with respect
1670 to the consideration of the compliance history of a
1671 permit applicant; providing for applicability;
1672 defining the term "regulated activity"; specifying the
1673 period of compliance history to be considered is
1674 issuing or renewing a permit; providing criteria to be
1675 considered by the Department of Environmental
1676 Protection; authorizing expedited review of permit
1677 issuance, renewal, modification, and transfer;
1678 providing for a reduced number of inspections;
1679 providing for extended permit duration; authorizing
1680 the department to make additional incentives available
1681 under certain circumstances; providing for automatic
1682 permit renewal and reduced or waived fees under
1683 certain circumstances; requiring the department to
1684 adopt rules that are binding on a water management
1685 district or local government that has been delegated
1686 certain regulatory duties; amending ss.161.041 and
1687 373.413, F.S.; specifying that s. 403.0874, F.S.;
1688 authorizing expedited permitting, applies to
1689 provisions governing beaches and shores and surface
1690 water management and storage; amending s. 403.087,
1691 F.S.; revising conditions under which the department
1692 is authorized to revoke a permit; amending s.
1693 403.1838, F.S.; revising the term "financially
1694 disadvantaged small community"; amending s. 403.703,



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1695 F.S.; revising the term "solid waste" to exclude
1696 sludge from a waste treatment works that is not
1697 discarded; amending s. 403.707, F.S.; revising
1698 provisions relating to disposal by persons of solid
1699 waste resulting from their own activities on their
1700 property; clarifying what constitutes "addressed by a
1701 groundwater monitoring plan" with regard to certain
1702 effects on groundwater and surface waters; authorizing
1703 the disposal of solid waste over a zone of discharge;
1704 providing that exceedance of soil cleanup target
1705 levels is not a basis for enforcement or cleanup;
1706 extending the duration of all permits issued to solid
1707 waste management facilities; providing applicability;
1708 providing that certain disposal of solid waste does
1709 not create liability for site cleanup; amending s.
1710 403.814, F.S.; providing for issuance of general
1711 permits for the construction, alteration, and
1712 maintenance of certain surface water management
1713 systems without the action of the department or a
1714 water management district; specifying conditions for
1715 the general permits; amending s. 380.06, F.S.;
1716 exempting a proposed solid mineral mine or a proposed
1717 addition or expansion of an existing solid mineral
1718 mine from provisions governing developments of
1719 regional impact; providing certain exceptions;
1720 amending ss. 380.0657 and 403.973, F.S.; authorizing
1721 expedited permitting for certain inland multimodal
1722 facilities and for commercial or industrial
1723 development projects that individually or collectively



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1724 will create a minimum number of jobs; providing for a
1725 project-specific memorandum of agreement to apply to a
1726 project subject to expedited permitting; providing for
1727 review and certification of a business as eligible for
1728 expedited permitting by the Secretary of Environmental
1729 Protection rather than by the Office of Tourism,
1730 Trade, and Economic Development; amending s. 163.3180,
1731 F.S.; providing an exemption to the level-of-service
1732 standards adopted under the Strategic Intermodal
1733 System for certain inland multimodal facilities;
1734 specifying project criteria; amending s. 373.4137,
1735 F.S., relating to transportation projects; revising
1736 legislative findings with respect to the options for
1737 mitigation; revising certain requirements for
1738 determining the habitat impacts of transportation
1739 projects; requiring water management districts to
1740 purchase credits from public or private mitigation
1741 banks under certain conditions; providing for the
1742 release of certain mitigation funds held for the
1743 benefit of a water management district if a project is
1744 excluded from a mitigation plan; revising the
1745 procedure for excluding a project from a mitigation
1746 plan; amending s. 373.41492, F.S.; imposing a
1747 mitigation fee for mining activities within the Miami-
1748 Dade County Lake Belt Area; authorizing the use of
1749 proceeds from the water treatment plant upgrade fee to
1750 pay for specified mitigation projects; requiring
1751 proceeds from the water treatment plant upgrade fee to
1752 be transferred by the Department of Revenue to the



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1753 South Florida Water Management District and deposited
1754 into the Lake Belt Mitigation Trust Fund for a
1755 specified period of time; providing, after that
1756 period, for the proceeds of the water treatment plant
1757 upgrade fee to return to being transferred by the
1758 Department of Revenue to a trust fund established by
1759 Miami-Dade County for specified purposes; conforming a
1760 term; amending s. 526.203, F.S.; authorizing the sale
1761 of unblended fuels for certain uses; amending s.
1762 373.414, F.S.; revising rules of the Department of
1763 Environmental Protection relating to the uniform
1764 mitigation assessment method for activities in surface
1765 waters and wetlands; directing the Department of
1766 Environmental Protection to make additional changes to
1767 conform; providing for reassessment of mitigation
1768 banks under certain conditions; amending s. 373.4136,
1769 F.S.; clarifying the use of the uniform mitigation
1770 assessment method for mitigation credits for the
1771 establishment and operation of mitigation banks;
1772 amending s. 604.50, F.S.; clarifying and expanding
1773 farm-related structures exempt from building codes;
1774 providing for fuel tank system deadlines and
1775 exemption; providing an effective date. providing an
1776 effective date.



320138

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

1 **Senate Amendment to Amendment (464514) (with title**
2 **amendment)**

3
4 Delete lines 362 - 388
5 and insert:

6 Section 11. Subsection (3) of section 373.441, Florida
7 Statutes, is amended, present subsections (4) and (5) of that
8 section are renumbered as subsections (7) and (8), respectively,
9 and new subsections (4), (5), and (6) are added to that section,
10 to read:

11 373.441 Role of counties, municipalities, and local
12 pollution control programs in permit processing; delegation.-



320138

13 (3) The department may delegate the environmental resource
14 permitting program to local governments. The department shall
15 approve delegation to a local government if:

16 1. The local government has provided reasonable assurance
17 that the delegation would further the goal of providing an
18 efficient, effective, and streamlined permitting system;

19 2. The local government has the financial, technical, and
20 administrative capabilities and desire to effectively and
21 efficiently implement and enforce the program;

22 3. The protection of environmental resources will be
23 maintained; and

24 4. The local government meets the requirements set forth by
25 department rule. The department may delegate a portion of the
26 environmental resource permit program to local governments,
27 including those wherein the stormwater management system
28 regulations or the wetland or other surface water resource
29 regulations are retained by the department or the district, and
30 the other portion is delegated to the local government.

31 ~~Delegation of authority shall be approved if the local~~
32 ~~government meets the requirements set forth in rule 62-344,~~
33 ~~Florida Administrative Code. This section does not require a~~
34 ~~local government to seek delegation of the environmental~~
35 ~~resource permit program.~~

36 (4) If the department approves and delegates the
37 environmental resource permit, the local government has the
38 authority to issue environmental resource permits that provide
39 the equivalent level of protection as the environmental resource
40 program under this part. Local governments may also apply
41 stricter standards in addition to the applicable environmental



320138

42 resource permit program rules.

43 (5) The environmental resource permit program may be
44 delegated to a local government under either of the following
45 two options:

46 (a) The local government agrees to implement the state
47 environmental resource permit program pursuant to this part,
48 applicable agency rules, and chapter 120.

49 (b) The local government incorporates the relevant portions
50 of the department's or water management district's environmental
51 resource permit program rules into the local rules or
52 ordinances. The local program must be substantially equivalent
53 to the existing state environmental resource permitting program.

54 1. The local government program may incorporate stricter
55 substantive provisions of the state environmental resource
56 program or the substantially equivalent provisions.

57 2. The local government program is not required to include
58 or incorporate any less strict substantive state standards, such
59 as exemptions or general permits, in order to obtain delegation
60 of the environmental resource program.

61 3. The local government program shall use administrative
62 and procedural requirements that are the same as or
63 substantially equivalent to the provisions of ss. 120.52,
64 120.53, 120.533, 120.565, 120.57, 120.62, 120.66, 120.69,
65 373.114(1), and 373.413(3), and any notice or other procedural
66 requirements that apply to activities reviewed under this part.

67 (6) If the department and water management district
68 delegates authority to a local government pursuant to this
69 section, it may not regulate the activities delegated.

70



320138

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

72 And the title is amended as follows:

73 Delete lines 1647 - 1655

74 and insert:

75 amending s. 373.441, F.S.; authorizing the department

76 and water management districts to delegate certain

77 pollution control programs to local governments;

78 providing criteria; amending s. 376.30715, F.S.;



813598

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment to Amendment (464514)

Delete lines 542 - 551
and insert:

noise. The department is authorized to establish reasonable zones of mixing for discharges into waters. For existing installations as defined by Rule 62-520.200(10), F.A.C., effective July 12, 2009, zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Exceedances of primary and secondary ground water standards that occur within a zone of discharge shall not create



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13 liability pursuant to this Chapter or Chapter 376 for site
14 clean-up, nor shall exceedances of soil cleanup target levels be
15 a basis for enforcement or site clean-up.



436922

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

1 **Senate Amendment to Amendment (464514) (with title**
2 **amendment)**

3
4 Delete lines 626 - 687

5 and insert:

6 Section 19. Paragraph (1)(f) of section 403.7045, Florida
7 Statutes, is amended to read:

8 403.7045 Application of act and integration with other
9 acts. -

10 (1) The following wastes or activities shall not be
11 regulated pursuant to this act:

12 (f) Industrial byproducts, if:



436922

13 1. A majority of the industrial byproducts are demonstrated
14 to be sold, used, or reused within 1 year.

15 2. The industrial byproducts are not discharged, deposited,
16 injected, dumped, spilled, leaked, or placed upon any land or
17 water so that such industrial byproducts, or any constituent
18 thereof, may enter other lands or be emitted into the air or
19 discharged into any waters, including groundwaters, or otherwise
20 enter the environment such that a threat of contamination in
21 excess of applicable department standards and criteria or a
22 significant threat to public health is caused.

23 3. The industrial byproducts are not hazardous wastes as
24 defined under s. 403.703 and rules adopted under this section.

25 Sludge from an industrial waste treatment works that meets
26 the exemption requirements of this paragraph is not considered
27 to be solid waste as defined in s. 403.703(32).

28 Section 20. Subsections (2) and (3) of section 403.707,
29 Florida Statutes, are amended to read:

30 403.707 Permits.—

31 (2) Except as provided in s. 403.722(6), a permit under
32 this section is not required for the following: ~~if the activity~~
33 ~~does not create a public nuisance or any condition adversely~~
34 ~~affecting the environment or public health and does not violate~~
35 ~~other state or local laws, ordinances, rules, regulations, or~~
36 ~~orders:~~

37 (a) Disposal by persons of solid waste resulting from
38 their own activities on their own property, if such waste is
39 ordinary household waste from their residential property or is
40 rocks, soils, trees, tree remains, and other vegetative matter
41 that normally result from land development operations. Disposal



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42 of materials that could create a public nuisance or adversely
43 affect the environment or public health, such as white goods;
44 automotive materials, such as batteries and tires; petroleum
45 products; pesticides; solvents; or hazardous substances, is not
46 covered under this exemption.

47 (b) Storage in containers by persons of solid waste
48 resulting from their own activities on their property, leased or
49 rented property, or property subject to a homeowners or
50 maintenance association for which the person contributes
51 association assessments, if the solid waste in such containers
52 is collected at least once a week.

53 (c) Disposal by persons of solid waste resulting from
54 their own activities on their property, if the environmental
55 effects of such disposal on groundwater and surface waters are:

56 1. Addressed or authorized by a site certification order
57 issued under part II or a permit issued by the department under
58 this chapter or rules adopted pursuant to this chapter; or

59 2. Addressed or authorized by, or exempted from the
60 requirement to obtain, a groundwater monitoring plan approved by
61 the department. If the facility has a permit or certification
62 authorizing disposal activity, new areas where solid waste is
63 disposed of that are being monitored by an existing or modified
64 ground water monitoring plan are not required to be specifically
65 authorized by permit or certification.

66
67
68 ===== T I T L E A M E N D M E N T =====

69 And the title is amended as follows:

70 Delete lines 1694 - 1697



436922

71 and insert:
72 disadvantaged small community"; amending s. 403.7045, F.S.;
73 to exclude sludge from an industrial waste treatment works from
74 the definition of "solid waste"; amending s. 403.707,
75 F.S.;revising

By Senator Evers

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1 A bill to be entitled
2 An act relating to environmental permitting; amending
3 s. 120.569, F.S.; authorizing the provision of certain
4 notices under the Administrative Procedure Act via a
5 link to a publicly available Internet website;
6 providing that a nonapplicant who petitions to
7 challenge an agency's issuance of a license or
8 conceptual approval in certain circumstances has the
9 burden of ultimate persuasion and the burden of going
10 forward with evidence; amending s. 120.60, F.S.;
11 requiring that an agency process a permit application
12 notwithstanding an outstanding request for additional
13 information from the applicant; revising the period
14 for an agency to approve or deny an application for a
15 license; creating s. 125.0112, F.S.; providing that
16 the construction and operation of a biofuel processing
17 facility or renewable energy generating facility and
18 the cultivation of bioenergy by a local government is
19 a valid and permitted land use; requiring expedited
20 review of such facilities; providing that such
21 facilities are eligible for the alternative state
22 review process; amending s. 125.022, F.S.; prohibiting
23 a county from requiring an applicant to obtain a
24 permit or approval from another state or federal
25 agency as a condition of approving a development
26 permit; authorizing a county to attach certain
27 disclaimers to the issuance of a development permit;
28 creating s. 161.032, F.S.; requiring that the
29 Department of Environmental Protection review an

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30 application for certain permits under the Beach and
31 Shore Preservation Act and request additional
32 information within a specified time; requiring that
33 the department proceed to process the application if
34 the applicant believes that a request for additional
35 information is not authorized by law or rule;
36 extending the period for an applicant to timely submit
37 additional information, notwithstanding certain
38 provisions of the Administrative Procedure Act;
39 amending s. 163.3184, F.S.; redefining the term
40 "affected person" for purposes of the adoption process
41 for a comprehensive plan or plan amendments to include
42 persons who can show that their substantial interest
43 will be affected by the plan or amendment; amending s.
44 163.3215, F.S.; redefining the term "aggrieved or
45 adversely affected party" for purposes of standing to
46 enforce local comprehensive plans; deleting a
47 requirement that the adverse interest exceed in degree
48 the general interest shared by all persons; amending
49 s. 166.033, F.S.; prohibiting a municipality from
50 requiring an applicant to obtain a permit or approval
51 from another state or federal agency as a condition of
52 approving a development permit; authorizing a county
53 to attach certain disclaimers to the issuance of a
54 development permit; creating s. 166.0447, F.S.;
55 providing that the construction and operation of a
56 biofuel processing facility or renewable energy
57 generating facility and the cultivation of bioenergy
58 is a valid and permitted land use within the

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59 unincorporated area of a municipality; prohibiting any
60 requirement that the owner or operator of such a
61 facility obtain comprehensive plan amendments, use
62 permits, waivers, or variances, or pay any fee in
63 excess of a specified amount; amending s. 373.026,
64 F.S.; requiring the Department of Environmental
65 Protection to expand its use of Internet-based self-
66 certification services for exemptions and permits
67 issued by the department and water management
68 districts; amending s. 373.4141, F.S.; requiring that
69 a request by the department or a water management
70 district that an applicant provide additional
71 information be accompanied by the signature of
72 specified officials of the department or district;
73 reducing the time within which the department or
74 district must approve or deny a permit application;
75 providing that an application for a permit that is
76 required by a local government and that is not
77 approved within a specified period is deemed approved
78 by default; amending s. 373.4144, F.S.; providing
79 legislative intent with respect to the coordination of
80 regulatory duties among specified state and federal
81 agencies; requiring that the department report
82 annually to the Legislature on efforts to expand the
83 state programmatic general permit or regional general
84 permits; providing for a voluntary state programmatic
85 general permit for certain dredge and fill activities;
86 amending s. 373.441, F.S.; requiring that certain
87 counties or municipalities apply by a specified date

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88 to the department or water management district for
89 authority to require certain permits; providing that
90 following such delegation, the department or district
91 may not regulate activities that are subject to the
92 delegation; amending s. 403.061, F.S., relating to the
93 use of online self-certification; conforming
94 provisions to changes made by the act; creating s.
95 403.0874, F.S.; providing a short title; providing
96 legislative findings and intent with respect to the
97 consideration of the compliance history of a permit
98 applicant; providing for applicability; specifying the
99 period of compliance history to be considered is
100 issuing or renewing a permit; providing criteria to be
101 considered by the Department of Environmental
102 Protection; authorizing expedited review of permit
103 issuance, renewal, modification, and transfer;
104 providing for a reduced number of inspections;
105 providing for extended permit duration; authorizing
106 the department to make additional incentives available
107 under certain circumstances; providing for automatic
108 permit renewal and reduced or waived fees under
109 certain circumstances; requiring the department to
110 adopt rules that are binding on a water management
111 district or local government that has been delegated
112 certain regulatory duties; amending ss. 161.041 and
113 373.413, F.S.; specifying that s. 403.0874, F.S.,
114 authorizing expedited permitting, applies to
115 provisions governing beaches and shores and surface
116 water management and storage; amending s. 403.087,

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117 F.S.; revising conditions under which the department
118 is authorized to revoke a permit; amending s. 403.412,
119 F.S.; eliminating a provision limiting a requirement
120 for demonstrating injury in order to seek relief under
121 the Environmental Protection Act; amending s. 403.814,
122 F.S.; providing for issuance of general permits for
123 the construction, alteration, and maintenance of
124 certain surface water management systems without the
125 action of the department or a water management
126 district; specifying conditions for the general
127 permits; amending s. 380.06, F.S.; exempting a
128 proposed phosphate mine or a proposed addition or
129 expansion of an existing phosphate mine from
130 provisions governing developments of regional impact;
131 providing certain exceptions; amending ss. 380.0657
132 and 403.973, F.S.; authorizing expedited permitting
133 for certain inland multimodal facilities and for
134 commercial or industrial development projects that
135 individually or collectively will create a minimum
136 number of jobs; providing for a project-specific
137 memorandum of agreement to apply to a project subject
138 to expedited permitting; providing for review and
139 certification of a business as eligible for expedited
140 permitting by the Secretary of Environmental
141 Protection rather than by the Office of Tourism,
142 Trade, and Economic Development; amending s. 163.3180,
143 F.S.; providing an exemption to the level-of-service
144 standards adopted under the Strategic Intermodal
145 System for certain inland multimodal facilities;

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146 specifying project criteria; amending s. 373.4137,
147 F.S., relating to transportation projects; revising
148 legislative findings with respect to the options for
149 mitigation; revising certain requirements for
150 determining the habitat impacts of transportation
151 projects; providing for the release of certain
152 mitigation funds held for the benefit of a water
153 management district if a project is excluded from a
154 mitigation plan; revising the procedure for excluding
155 a project from a mitigation plan; providing an
156 effective date.

157

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

159

160 Section 1. Subsection (1) of section 120.569, Florida
161 Statutes, is amended, and paragraph (p) is added to subsection
162 (2) of that section, to read:

163 120.569 Decisions which affect substantial interests.—

164 (1) The provisions of this section apply in all proceedings
165 in which the substantial interests of a party are determined by
166 an agency, unless the parties are proceeding under s. 120.573 or
167 s. 120.574. Unless waived by all parties, s. 120.57(1) applies
168 whenever the proceeding involves a disputed issue of material
169 fact. Unless otherwise agreed, s. 120.57(2) applies in all other
170 cases. If a disputed issue of material fact arises during a
171 proceeding under s. 120.57(2), ~~then,~~ unless waived by all
172 parties, the proceeding under s. 120.57(2) shall be terminated
173 and a proceeding under s. 120.57(1) shall be conducted. Parties
174 shall be notified of any order, including a final order. Unless

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175 waived, a copy of the order shall be delivered or mailed to each
176 party or the party's attorney of record at the address of
177 record. Each notice shall inform the recipient of any
178 administrative hearing or judicial review that is available
179 under this section, s. 120.57, or s. 120.68; shall indicate the
180 procedure which must be followed to obtain the hearing or
181 judicial review; and shall state the time limits that ~~which~~
182 apply. Notwithstanding any other provision of law, notice of the
183 procedure to obtain an administrative hearing or judicial
184 review, including any items required by the uniform rules
185 adopted pursuant to s. 120.54(5), may be provided via a link to
186 a publicly available Internet website.

187 (2)

188 (p) For any proceeding arising under chapter 373, chapter
189 378, or chapter 403, if a nonapplicant petitions as a third
190 party to challenge an agency's issuance of a license or
191 conceptual approval, the petitioner initiating the action has
192 the burden of ultimate persuasion and, in the first instance,
193 has the burden of going forward with the evidence.

194 Notwithstanding subsection (1), this paragraph applies to
195 proceedings under s. 120.574.

196 Section 2. Subsection (1) of section 120.60, Florida
197 Statutes, as amended by chapter 2010-279, Laws of Florida, is
198 amended to read:

199 120.60 Licensing.—

200 (1) Upon receipt of a license application, an agency shall
201 examine the application and, within 30 days after such receipt,
202 notify the applicant of any apparent errors or omissions and
203 request any additional information the agency is permitted by

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204 law to require. If the applicant believes that the request for
205 such additional information is not authorized by law or agency
206 rule, the agency, at the applicant's request, shall proceed to
207 process the permit application. An agency may not deny a license
208 for failure to correct an error or omission or to supply
209 additional information unless the agency timely notified the
210 applicant within this 30-day period. The agency may establish by
211 rule the time period for submitting any additional information
212 requested by the agency. For good cause shown, the agency shall
213 grant a request for an extension of time for submitting the
214 additional information. If the applicant believes the agency's
215 request for additional information is not authorized by law or
216 rule, the agency, at the applicant's request, shall proceed to
217 process the application. An application is complete upon receipt
218 of all requested information and correction of any error or
219 omission for which the applicant was timely notified or when the
220 time for such notification has expired. An application for a
221 license must be approved or denied within 60 ~~90~~ days after
222 receipt of a completed application unless a shorter period of
223 time for agency action is provided by law. The 60-day ~~90-day~~
224 time period is tolled by the initiation of a proceeding under
225 ss. 120.569 and 120.57. Any application for a license which is
226 not approved or denied within the 60-day ~~90-day~~ or shorter time
227 period, within 15 days after conclusion of a public hearing held
228 on the application, or within 45 days after a recommended order
229 is submitted to the agency and the parties, whichever action and
230 timeframe is latest and applicable, is considered approved
231 unless the recommended order recommends that the agency deny the
232 license. Subject to the satisfactory completion of an

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233 examination if required as a prerequisite to licensure, any
234 license that is considered approved shall be issued and may
235 include such reasonable conditions as are authorized by law. Any
236 applicant for licensure seeking to claim licensure by default
237 under this subsection shall notify the agency clerk of the
238 licensing agency, in writing, of the intent to rely upon the
239 default license provision of this subsection, and may not take
240 any action based upon the default license until after receipt of
241 such notice by the agency clerk.

242 Section 3. Section 125.0112, Florida Statutes, is created
243 to read:

244 125.0112 Biofuels and renewable energy.—The construction
245 and operation of a biofuel processing facility or a renewable
246 energy generating facility, as defined in s. 366.91(2)(d), and
247 the cultivation and production of bioenergy, as defined pursuant
248 to s. 163.3177, shall be considered by a local government to be
249 a valid industrial, agricultural, and silvicultural use
250 permitted within those land use categories in the local
251 comprehensive land use plan. If the local comprehensive plan
252 does not specifically allow for the construction of a biofuel
253 processing facility or renewable energy facility, the local
254 government shall establish a specific review process that may
255 include expediting local review of any necessary comprehensive
256 plan amendment, zoning change, use permit, waiver, variance, or
257 special exemption. Local expedited review of a proposed biofuel
258 processing facility or a renewable energy facility does not
259 obligate a local government to approve such proposed use. A
260 comprehensive plan amendment necessary to accommodate a biofuel
261 processing facility or renewable energy facility shall, if

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262 approved by the local government, be eligible for the
263 alternative state review process in s. 163.32465. The
264 construction and operation of a facility and related
265 improvements on a portion of a property under this section does
266 not affect the remainder of the property's classification as
267 agricultural under s. 193.461.

268 Section 4. Section 125.022, Florida Statutes, is amended to
269 read:

270 125.022 Development permits.—When a county denies an
271 application for a development permit, the county shall give
272 written notice to the applicant. The notice must include a
273 citation to the applicable portions of an ordinance, rule,
274 statute, or other legal authority for the denial of the permit.
275 As used in this section, the term "development permit" has the
276 same meaning as in s. 163.3164. A county may not require as a
277 condition of approval for a development permit that an applicant
278 obtain a permit or approval from any other state or federal
279 agency. Issuance of a development permit by a county does not in
280 any way create any rights on the part of the applicant to obtain
281 a permit from another state or federal agency and does not
282 create any liability on the part of the county for issuance of
283 the permit if the applicant fails to fulfill its legal
284 obligations to obtain requisite approvals or fulfill the
285 obligations imposed by another state or a federal agency. A
286 county may attach such a disclaimer to the issuance of a
287 development permit, and may include a permit condition that all
288 other applicable state or federal permits be obtained before
289 commencement of the development. This section does not prohibit
290 a county from providing information to an applicant regarding

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291 what other state or federal permits may apply.

292 Section 5. Section 161.032, Florida Statutes, is created to
293 read:

294 161.032 Application review; request for additional
295 information.-

296 (1) Within 30 days after receipt of an application for a
297 permit under this part, the department shall review the
298 application and shall request submission of any additional
299 information the department is permitted by law to require. If
300 the applicant believes that a request for additional information
301 is not authorized by law or rule, the applicant may request a
302 hearing pursuant to s. 120.57. Within 30 days after receipt of
303 such additional information, the department shall review such
304 additional information and may request only that information
305 needed to clarify such additional information or to answer new
306 questions raised by or directly related to such additional
307 information. If the applicant believes that the request for such
308 additional information by the department is not authorized by
309 law or rule, the department, at the applicant's request, shall
310 proceed to process the permit application.

311 (2) Notwithstanding s. 120.60, an applicant for a permit
312 under this part has 90 days after the date of a timely request
313 for additional information to submit such information. If an
314 applicant requires more than 90 days in order to respond to a
315 request for additional information, the applicant must notify
316 the agency processing the permit application in writing of the
317 circumstances, at which time the application shall be held in
318 active status for no more than one additional period of up to 90
319 days. Additional extensions may be granted for good cause shown

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320 by the applicant. A showing that the applicant is making a
321 diligent effort to obtain the requested additional information
322 constitutes good cause. Failure of an applicant to provide the
323 timely requested information by the applicable deadline shall
324 result in denial of the application without prejudice.

325 Section 6. Paragraph (a) of subsection (1) of section
326 163.3184, Florida Statutes, is amended to read:

327 163.3184 Process for adoption of comprehensive plan or plan
328 amendment.—

329 (1) DEFINITIONS.—As used in this section, the term:

330 (a) "Affected person" includes the affected local
331 government; persons owning property, residing, or owning or
332 operating a business within the boundaries of the local
333 government whose plan is the subject of the review and who can
334 demonstrate that their substantial interest will be affected by
335 the plan or plan amendment; owners of real property abutting
336 real property that is the subject of a proposed change to a
337 future land use map; and adjoining local governments that can
338 demonstrate that the plan or plan amendment will produce
339 substantial impacts on the increased need for publicly funded
340 infrastructure or substantial impacts on areas designated for
341 protection or special treatment within their jurisdiction. Each
342 person, other than an adjoining local government, in order to
343 qualify under this definition, shall also have submitted oral or
344 written comments, recommendations, or objections to the local
345 government during the period of time beginning with the
346 transmittal hearing for the plan or plan amendment and ending
347 with the adoption of the plan or plan amendment.

348 Section 7. Subsection (2) of section 163.3215, Florida

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349 Statutes, is amended to read:

350 163.3215 Standing to enforce local comprehensive plans
351 through development orders.-

352 (2) As used in this section, the term "aggrieved or
353 adversely affected party" means any person or local government
354 that can demonstrate that their substantial interest will be
355 affected by a development order ~~will suffer an adverse effect to~~
356 ~~an interest protected or furthered by the local government~~
357 ~~comprehensive plan, including interests related to health and~~
358 ~~safety, police and fire protection service systems, densities or~~
359 ~~intensities of development, transportation facilities, health~~
360 ~~care facilities, equipment or services, and environmental or~~
361 ~~natural resources. The alleged adverse interest may be shared in~~
362 ~~common with other members of the community at large but must~~
363 ~~exceed in degree the general interest in community good shared~~
364 ~~by all persons.~~ The term includes the owner, developer, or
365 applicant for a development order.

366 Section 8. Section 166.033, Florida Statutes, is amended to
367 read:

368 166.033 Development permits.-When a municipality denies an
369 application for a development permit, the municipality shall
370 give written notice to the applicant. The notice must include a
371 citation to the applicable portions of an ordinance, rule,
372 statute, or other legal authority for the denial of the permit.
373 As used in this section, the term "development permit" has the
374 same meaning as in s. 163.3164. A municipality may not require
375 as a condition of approval for a development permit that an
376 applicant obtain a permit or approval from any other state or
377 federal agency. Issuance of a development permit by a

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378 municipality does not in any way create any right on the part of
379 an applicant to obtain a permit from another state or federal
380 agency and does not create any liability on the part of the
381 municipality for issuance of the permit if the applicant fails
382 to fulfill its legal obligations to obtain requisite approvals
383 or fulfill the obligations imposed by another state or federal
384 agency. A municipality may attach such a disclaimer to the
385 issuance of development permits and may include a permit
386 condition that all other applicable state or federal permits be
387 obtained before commencement of the development. This section
388 does not prohibit a municipality from providing information to
389 an applicant regarding what other state or federal permits may
390 apply.

391 Section 9. Section 166.0447, Florida Statutes, is created
392 to read:

393 166.0447 Biofuels and renewable energy.—The construction
394 and operation of a biofuel processing facility or a renewable
395 energy generating facility, as defined in s. 366.91(2)(d), and
396 the cultivation and production of bioenergy, as defined pursuant
397 to s. 163.3177, are each a valid industrial, agricultural, and
398 silvicultural use permitted within those land use categories in
399 the local comprehensive land use plan and for purposes of any
400 local zoning regulation within an unincorporated area of a
401 municipality. Such comprehensive land use plans and local zoning
402 regulations may not require the owner or operator of a biofuel
403 processing facility or a renewable energy generating facility to
404 obtain any comprehensive plan amendment, rezoning, special
405 exemption, use permit, waiver, or variance, or to pay any
406 special fee in excess of \$1,000 to operate in an area zoned for

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407 or categorized as industrial, agricultural, or silvicultural
408 use. This section does not exempt biofuel processing facilities
409 and renewable energy generating facilities from complying with
410 building code requirements. The construction and operation of a
411 facility and related improvements on a portion of a property
412 pursuant to this section does not affect the remainder of that
413 property's classification as agricultural pursuant to s.
414 193.461.

415 Section 10. Subsection (10) is added to section 373.026,
416 Florida Statutes, to read:

417 373.026 General powers and duties of the department.—The
418 department, or its successor agency, shall be responsible for
419 the administration of this chapter at the state level. However,
420 it is the policy of the state that, to the greatest extent
421 possible, the department may enter into interagency or
422 interlocal agreements with any other state agency, any water
423 management district, or any local government conducting programs
424 related to or materially affecting the water resources of the
425 state. All such agreements shall be subject to the provisions of
426 s. 373.046. In addition to its other powers and duties, the
427 department shall, to the greatest extent possible:

428 (10) Expand the use of Internet-based self-certification
429 services for appropriate exemptions and general permits issued
430 by the department and the water management districts, if such
431 expansion is economically feasible. In addition to expanding the
432 use of Internet-based self-certification services for
433 appropriate exemptions and general permits, the department and
434 water management districts shall identify and develop general
435 permits for activities currently requiring individual review

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436 which could be expedited through the use of professional
437 certification.

438 Section 11. Section 373.4141, Florida Statutes, is amended
439 to read:

440 373.4141 Permits; processing.—

441 (1) Within 30 days after receipt of an application for a
442 permit under this part, the department or the water management
443 district shall review the application and shall request
444 submittal of all additional information the department or the
445 water management district is permitted by law to require. If the
446 applicant believes any request for additional information is not
447 authorized by law or rule, the applicant may request a hearing
448 pursuant to s. 120.57. Within 30 days after receipt of such
449 additional information, the department or water management
450 district shall review it and may request only that information
451 needed to clarify such additional information or to answer new
452 questions raised by or directly related to such additional
453 information. If the applicant believes the request of the
454 department or water management district for such additional
455 information is not authorized by law or rule, the department or
456 water management district, at the applicant's request, shall
457 proceed to process the permit application. In order to ensure
458 the proper scope and necessity for the information requested, a
459 second request for additional information, if any, must be
460 signed by the supervisor of the project manager. A third request
461 for additional information, if any, must be signed by the
462 division director who oversees the program area. A fourth
463 request for additional information, if any, must be signed by
464 the assistant secretary of the department or the assistant

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465 executive director of the district. Any additional request for
466 information must be signed by the secretary of the department or
467 the executive director of the district.

468 (2) (a) A permit shall be approved or denied within 60 ~~90~~
469 days after receipt of the original application, the last item of
470 timely requested additional material, or the applicant's written
471 request to begin processing the permit application.

472 (b) A permit required by a local government for an activity
473 that also requires a state permit under this part shall be
474 approved or denied within 60 days after receipt of the original
475 application. An application for a local permit which is not
476 approved or denied within 60 days is deemed approved by default.

477 (3) Processing of applications for permits for affordable
478 housing projects shall be expedited to a greater degree than
479 other projects.

480 Section 12. Section 373.4144, Florida Statutes, is amended
481 to read:

482 373.4144 Federal environmental permitting.—

483 (1) It is the intent of the Legislature to:

484 (a) Facilitate coordination and a more efficient process of
485 implementing regulatory duties and functions between the
486 Department of Environmental Protection, the water management
487 districts, the United States Army Corps of Engineers, the United
488 States Fish and Wildlife Service, the National Marine Fisheries
489 Service, the United States Environmental Protection Agency, the
490 Fish and Wildlife Conservation Commission, and other relevant
491 federal and state agencies.

492 (b) Authorize the Department of Environmental Protection to
493 obtain issuance by the United States Army Corps of Engineers,

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494 pursuant to state and federal law and as set forth in this
495 section, of an expanded state programmatic general permit, or a
496 series of regional general permits, for categories of activities
497 in waters of the United States governed by the Clean Water Act
498 and in navigable waters under the Rivers and Harbors Act of 1899
499 which are similar in nature, which will cause only minimal
500 adverse environmental effects when performed separately, and
501 which will have only minimal cumulative adverse effects on the
502 environment.

503 (c) Use the mechanism of such a state general permit or
504 such regional general permits to eliminate overlapping federal
505 regulations and state rules that seek to protect the same
506 resource and to avoid duplication of permitting between the
507 United States Army Corps of Engineers and the department for
508 minor work located in waters of the United States, including
509 navigable waters, thus eliminating, in appropriate cases, the
510 need for a separate individual approval from the United States
511 Army Corps of Engineers while ensuring the most stringent
512 protection of wetland resources.

513 (d) Direct the department not to seek issuance of or take
514 any action pursuant to any such permit or permits unless such
515 conditions are at least as protective of the environment and
516 natural resources as existing state law under this part and
517 federal law under the Clean Water Act and the Rivers and Harbors
518 Act of 1899. ~~The department is directed to develop, on or before~~
519 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
520 ~~maximum extent practicable, the federal and state wetland~~
521 ~~permitting programs. It is the intent of the Legislature that~~
522 ~~all dredge and fill activities impacting 10 acres or less of~~

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523 ~~wetlands or waters, including navigable waters, be processed by~~
524 ~~the state as part of the environmental resource permitting~~
525 ~~program implemented by the department and the water management~~
526 ~~districts. The resulting mechanism or plan shall analyze and~~
527 ~~propose the development of an expanded state programmatic~~
528 ~~general permit program in conjunction with the United States~~
529 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
530 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,~~
531 ~~and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,~~
532 ~~or in combination with an expanded state programmatic general~~
533 ~~permit, the mechanism or plan may propose the creation of a~~
534 ~~series of regional general permits issued by the United States~~
535 ~~Army Corps of Engineers pursuant to the referenced statutes. All~~
536 ~~of the regional general permits must be administered by the~~
537 ~~department or the water management districts or their designees.~~

538 (2) In order to effectuate efficient wetland permitting and
539 avoid duplication, the department and water management districts
540 are authorized to implement a voluntary state programmatic
541 general permit for all dredge and fill activities impacting 3
542 acres or less of wetlands or other surface waters, including
543 navigable waters, subject to agreement with the United States
544 Army Corps of Engineers, if the general permit is at least as
545 protective of the environment and natural resources as existing
546 state law under this part and federal law under the Clean Water
547 Act and the Rivers and Harbors Act of 1899. The department is
548 ~~directed to file with the Speaker of the House of~~
549 ~~Representatives and the President of the Senate a report~~
550 ~~proposing any required federal and state statutory changes that~~
551 ~~would be necessary to accomplish the directives listed in this~~

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552 ~~section and to coordinate with the Florida Congressional~~
553 ~~Delegation on any necessary changes to federal law to implement~~
554 ~~the directives.~~

555 (3) Nothing in this section shall be construed to preclude
556 the department from pursuing a series of regional general
557 permits for construction activities in wetlands or surface
558 waters or complete assumption of federal permitting programs
559 regulating the discharge of dredged or fill material pursuant to
560 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
561 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
562 Act of 1899, so long as the assumption encompasses all dredge
563 and fill activities in, on, or over jurisdictional wetlands or
564 waters, including navigable waters, within the state.

565 Section 13. Present subsections (3), (4), and (5) of
566 section 373.441, Florida Statutes, are renumbered as subsections
567 (5), (6), and (7), respectively, and new subsections (3) and (4)
568 are added to that section, to read:

569 373.441 Role of counties, municipalities, and local
570 pollution control programs in permit processing; delegation.—

571 (3) A county having a population of 75,000 or more or a
572 municipality that has local pollution control programs serving
573 populations of more than 50,000 must apply for delegation of
574 authority on or before June 1, 2012. A county, municipality, or
575 local pollution control programs that fails to apply for
576 delegation of authority may not require permits that in part or
577 in full are substantially similar to the requirements needed to
578 obtain an environmental resource permit.

579 (4) Upon delegation to a qualified local government, the
580 department and water management district may not regulate the

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581 activities subject to the delegation within that jurisdiction
582 unless regulation is required pursuant to the terms of the
583 delegation agreement.

584 Section 14. Subsection (41) of section 403.061, Florida
585 Statutes, is amended to read:

586 403.061 Department; powers and duties.—The department shall
587 have the power and the duty to control and prohibit pollution of
588 air and water in accordance with the law and rules adopted and
589 promulgated by it and, for this purpose, to:

590 (41) Expand the use of online self-certification for
591 appropriate exemptions and general permits issued by the
592 department or the water management districts if such expansion
593 is economically feasible. ~~Notwithstanding any other provision of~~
594 ~~law,~~ A local government may not specify the method or form for
595 documenting that a project qualifies for an exemption or meets
596 the requirements for a permit under chapter 161, chapter 253,
597 chapter 373, or this chapter. This limitation of local
598 government authority extends to Internet-based department
599 programs that provide for self-certification.

600
601 The department shall implement such programs in conjunction with
602 its other powers and duties and shall place special emphasis on
603 reducing and eliminating contamination that presents a threat to
604 humans, animals or plants, or to the environment.

605 Section 15. Section 403.0874, Florida Statutes, is created
606 to read:

607 403.0874 Incentive-based permitting program.—

608 (1) SHORT TITLE.—This section may be cited as the “Florida
609 Incentive-based Permitting Act.”

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610 (2) FINDINGS AND INTENT.—The Legislature finds and declares
611 that the department should consider compliance history when
612 deciding whether to issue, renew, amend, or modify a permit by
613 evaluating an applicant's site-specific and program-specific
614 relevant aggregate compliance history. Persons having a history
615 of complying with applicable permits or state environmental laws
616 and rules are eligible for permitting benefits, including, but
617 not limited to, expedited permit application reviews, longer-
618 duration permit periods, decreased announced compliance
619 inspections, and other similar regulatory and compliance
620 incentives to encourage and reward such persons for their
621 environmental performance.

622 (3) APPLICABILITY.—

623 (a) This section applies to all persons and regulated
624 activities that are subject to the permitting requirements of
625 chapter 161, chapter 373, or this chapter, and all other
626 applicable state or federal laws that govern activities for the
627 purpose of protecting the environment or the public health from
628 pollution or contamination.

629 (b) Notwithstanding paragraph (a), this section does not
630 apply to certain permit actions or environmental permitting laws
631 such as:

632 1. Environmental permitting or authorization laws that
633 regulate activities for the purpose of zoning, growth
634 management, or land use; or

635 2. Any federal law or program delegated or assumed by the
636 state to the extent that implementation of this section, or any
637 part of this section, would jeopardize the ability of the state
638 to retain such delegation or assumption.

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639 (c) As used in this section, the term "regulated activity"
640 means any activity, including, but not limited to, the
641 construction or operation of a facility, installation, system,
642 or project, for which a permit, certification, or authorization
643 is required under chapter 161, chapter 373, or this chapter.

644 (4) COMPLIANCE HISTORY.—The compliance history period shall
645 be the 5 years before the date any permit or renewal application
646 is received by the department. Any person is entitled to the
647 incentives under paragraph (5) (a) if:

648 (a)1. The applicant has conducted the regulated activity at
649 the same site for which the permit or renewal is sought for at
650 least 4 of the 5 years prior to the date the permit application
651 is received by the department; or

652 2. The applicant has conducted the same regulated activity
653 at a different site within the state for at least 4 of the 5
654 years prior to the date the permit or renewal application is
655 received by the department; and

656 (b) In the 5 years before the date the permit or renewal
657 application is received by the department or water management
658 district, the applicant has not been subject to a formal
659 administrative or civil judgment or criminal conviction whereby
660 an administrative law judge or civil or criminal court found the
661 applicant knowingly violated the applicable law or rule and the
662 violation was the proximate cause that resulted in significant
663 harm to human health or the environment. Administrative
664 settlement or consent orders, whether formal or informal, are
665 not judgments for purposes of this section unless entered into
666 as a result of significant harm to human health or the
667 environment.

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668 (5) COMPLIANCE INCENTIVES.—

669 (a) An applicant shall request all applicable incentives at
670 the time of application submittal. Unless otherwise prohibited
671 by state or federal law, rule, or regulation, and if the
672 applicant meets all other applicable criteria for the issuance
673 of a permit or authorization, an applicant is entitled to the
674 following incentives:

675 1. Expedited reviews on permit actions, including, but not
676 limited to, initial permit issuance, renewal, modification, and
677 transfer, if applicable. Expedited review means, at a minimum,
678 that any request for additional information regarding a permit
679 application shall be issued no later than 15 days after the
680 application is filed, and final agency action shall be taken no
681 later than 45 days after the application is deemed complete;

682 2. Priority review of permit application;

683 3. Reduced number of routine compliance inspections;

684 4. No more than two requests for additional information
685 under s. 120.60; and

686 5. Longer permit period durations.

687 (b) The department shall identify and make available
688 additional incentives to persons who demonstrate during a 10-
689 year compliance history period the implementation of activities
690 or practices that resulted in:

691 1. Reductions in actual or permitted discharges or
692 emissions;

693 2. Reductions in the impacts of regulated activities on
694 public lands or natural resources;

695 3. Implementation of voluntary environmental performance
696 programs, such as environmental management systems; and

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697 4. In the 10 years before the date the renewal application
698 is received by the department, the applicant having not been
699 subject to a formal administrative or civil judgment or criminal
700 conviction whereby an administrative law judge or civil or
701 criminal court found the applicant knowingly violated the
702 applicable law or rule and the violation was the proximate cause
703 that resulted in significant harm to human health or the
704 environment. Administrative settlement or consent orders,
705 whether formal or informal, are not judgments for purposes of
706 this section unless entered into as a result of significant harm
707 to the human health or the environment.

708 (c) Any person meeting one of the criteria in subparagraph
709 (b)1.-3., and the criteria in subparagraph (b)4., is entitled to
710 the following incentives:

711 1. Automatic permit renewals if there are no substantial
712 deviations or modifications in permitted activities or changed
713 circumstances; and

714 2. Reduced or waived application fees.

715 (6) RULEMAKING.—The department shall implement rulemaking
716 within 6 months after the effective date of this act. Such
717 rulemaking may identify additional incentives and programs not
718 expressly enumerated under this section, so long as each
719 incentive is consistent with the Legislature's purpose and
720 intent of this section. Any rule adopted by the department to
721 administer this section shall be deemed an invalid exercise of
722 delegated legislative authority if the department cannot
723 demonstrate how such rules will produce the compliance
724 incentives set forth in subsection (5). The department's rules
725 adopted under this section are binding on the water management

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726 districts and any local government that has been delegated or
727 assumed a regulatory program to which this section applies.

728 Section 16. Subsection (5) is added to section 161.041,
729 Florida Statutes, to read:

730 161.041 Permits required.—

731 (5) The provisions of s. 403.0874, relating to the
732 incentive-based permitting program, apply to all permits issued
733 under this chapter.

734 Section 17. Subsection (6) is added to section 373.413,
735 Florida Statutes, to read:

736 373.413 Permits for construction or alteration.—

737 (6) The provisions of s. 403.0874, relating to the
738 incentive-based permitting program, apply to permits issued
739 under this section.

740 Section 18. Subsection (7) of section 403.087, Florida
741 Statutes, is amended to read:

742 403.087 Permits; general issuance; denial; revocation;
743 prohibition; penalty.—

744 (7) A permit issued pursuant to this section shall not
745 become a vested right in the permittee. The department may
746 revoke any permit issued by it if it finds that the permitholder
747 knowingly:

748 (a) ~~Has~~ Submitted false or inaccurate information in the
749 his or her application for such permit;

750 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~
751 ~~regulations,~~ or ~~permit~~ conditions which directly relate to such
752 permit and has refused to correct or cure such violations when
753 requested to do so;

754 (c) ~~Has~~ Failed to submit operational reports or other

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755 information required by department rule which directly relate to
756 such permit and has refused to correct or cure such violations
757 when requested to do so ~~or regulation~~; or

758 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the
759 facility authorized by such permit.

760 Section 19. Subsection (5) of section 403.412, Florida
761 Statutes, is amended to read:

762 403.412 Environmental Protection Act.—

763 (5) In any administrative, licensing, or other proceedings
764 authorized by law for the protection of the air, water, or other
765 natural resources of the state from pollution, impairment, or
766 destruction, the Department of Legal Affairs, a political
767 subdivision or municipality of the state, or a citizen of the
768 state shall have standing to intervene as a party on the filing
769 of a verified pleading asserting that the activity, conduct, or
770 product to be licensed or permitted has or will have the effect
771 of impairing, polluting, or otherwise injuring the air, water,
772 or other natural resources of the state. As used in this section
773 and as it relates to citizens, the term "intervene" means to
774 join an ongoing s. 120.569 or s. 120.57 proceeding; this section
775 does not authorize a citizen to institute, initiate, petition
776 for, or request a proceeding under s. 120.569 or s. 120.57.
777 Nothing herein limits or prohibits a citizen whose substantial
778 interests will be determined or affected by a proposed agency
779 action from initiating a formal administrative proceeding under
780 s. 120.569 or s. 120.57. A citizen's substantial interests will
781 be considered to be determined or affected if the party
782 demonstrates it may suffer an injury in fact which is of
783 sufficient immediacy and is of the type and nature intended to

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784 be protected by this chapter. ~~No demonstration of special injury~~
785 ~~different in kind from the general public at large is required.~~
786 A sufficient demonstration of a substantial interest may be made
787 by a petitioner who establishes that the proposed activity,
788 conduct, or product to be licensed or permitted affects the
789 petitioner's use or enjoyment of air, water, or natural
790 resources protected by this chapter.

791 Section 20. Subsections (12) and (13) are added to section
792 403.814, Florida Statutes, to read:

793 403.814 General permits; delegation.-

794 (12) A general permit may be granted for the construction,
795 alteration, and maintenance of a surface water management system
796 serving a total project area of up to 40 acres. The construction
797 of such a system may proceed without any agency action by the
798 department or water management district if:

799 (a) The surface water management system design plans and
800 calculations are signed and sealed by a professional engineer
801 licensed under chapter 471;

802 (b) The system will not be located in surface waters or
803 wetlands, as delineated in s. 373.421(1);

804 (c) The system will not cause adverse water quantity
805 impacts to receiving waters and adjacent lands, as provided by
806 department or district rule;

807 (d) The system will not cause adverse flooding to onsite or
808 off-site property, as provided by department or district rule;

809 (e) The system will not cause adverse impacts to existing
810 surface water storage and conveyance capabilities, as provided
811 by department or district rule;

812 (f) The system will not adversely affect the quality of

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813 receiving waters such that the standards applicable to waters as
814 defined in s. 403.031(13), including any special standards for
815 Outstanding Florida Waters, will be violated, as provided by
816 department or district rule;

817 (g) The system will not adversely impact the maintenance of
818 surface or ground water levels or surface water flows
819 established pursuant to s. 373.042, as provided by department or
820 district rule;

821 (h) The system will not cause adverse impacts to a work of
822 the district established pursuant to s. 373.086, as provided by
823 department or district rule;

824 (i) The system will not be part of a larger plan of
825 development or sale;

826 (j) The system will comply with all applicable requirements
827 of the National Pollutant Discharge Elimination System, as
828 implemented by department or district rule; and

829 (k) Within 10 days after the commencement of construction
830 of the surface water management system, the professional
831 engineer who is responsible for the design provides written
832 notice of the commencement of construction to the department or
833 district.

834 (13) A general permit shall be granted for the
835 construction, alteration, and maintenance of a surface water
836 management system serving a total project area of up to 10
837 acres. The construction of such a system may proceed without any
838 agency action by the department or water management district if:

839 (a) The total project area is less than 10 acres;

840 (b) The total project area involves less than 2 acres of
841 impervious surface;

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842 (c) No activities will impact wetlands or other surface
843 waters;

844 (d) No activities are conducted in, on, or over wetlands or
845 other surface waters;

846 (e) Drainage facilities will not include pipes having
847 diameters greater than 24 inches, or the hydraulic equivalent,
848 and will not use pumps in any manner; and

849 (f) The project is not part of a larger common plan of
850 development or sale.

851 Section 21. Paragraph (u) is added to subsection (24) of
852 section 380.06, Florida Statutes, to read:

853 380.06 Developments of regional impact.—

854 (24) STATUTORY EXEMPTIONS.—

855 (u) Any proposed phosphate mine and any proposed addition
856 to, expansion of, or change to an existing phosphate mine is
857 exempt from the provisions of this section. Proposed changes to
858 any previously approved solid mineral mine development-of-
859 regional-impact development orders having vested rights is not
860 subject to further review or approval as a development of
861 regional impact or notice of proposed change review or approval
862 pursuant to subsection (19), except for those applications
863 pending as of July 1, 2011, which shall be governed by s.
864 380.115(2). Notwithstanding the foregoing, however, pursuant to
865 s. 380.115(1), previously approved solid mineral mine
866 development-of-regional-impact development orders shall continue
867 to enjoy vested rights and continue to be effective unless
868 rescinded by the developer.

869

870 If a use is exempt from review as a development of regional

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871 impact under paragraphs (a)-(s), but will be part of a larger
872 project that is subject to review as a development of regional
873 impact, the impact of the exempt use must be included in the
874 review of the larger project, unless such exempt use involves a
875 development of regional impact that includes a landowner,
876 tenant, or user that has entered into a funding agreement with
877 the Office of Tourism, Trade, and Economic Development under the
878 Innovation Incentive Program and the agreement contemplates a
879 state award of at least \$50 million.

880 Section 22. Subsection (1) of section 380.0657, Florida
881 Statutes, is amended to read:

882 380.0657 Expedited permitting process for economic
883 development projects.—

884 (1) The Department of Environmental Protection and, as
885 appropriate, the water management districts created under
886 chapter 373 shall adopt programs to expedite the processing of
887 wetland resource and environmental resource permits for economic
888 development projects that have been identified by a municipality
889 or county as meeting the definition of target industry
890 businesses under s. 288.106, or any inland multimodal facility,
891 receiving or sending cargo to or from Florida ports, with the
892 exception of those projects requiring approval by the Board of
893 Trustees of the Internal Improvement Trust Fund.

894 Section 23. Paragraph (a) of subsection (3) and subsections
895 (4), (5), (10), (11), (15), (17), and (18) of section 403.973,
896 Florida Statutes, are amended to read:

897 403.973 Expedited permitting; amendments to comprehensive
898 plans.—

899 (3) (a) The secretary shall direct the creation of regional

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900 permit action teams for the purpose of expediting review of
901 permit applications and local comprehensive plan amendments
902 submitted by:

903 1. Businesses creating at least 50 jobs or a commercial or
904 industrial development project that will be occupied by
905 businesses that would individually or collectively create at
906 least 50 jobs; or

907 2. Businesses creating at least 25 jobs if the project is
908 located in an enterprise zone, or in a county having a
909 population of fewer than 75,000 or in a county having a
910 population of fewer than 125,000 which is contiguous to a county
911 having a population of fewer than 75,000, as determined by the
912 most recent decennial census, residing in incorporated and
913 unincorporated areas of the county.

914 (4) The regional teams shall be established through the
915 execution of a project-specific memoranda of agreement developed
916 and executed by the applicant and the secretary, with input
917 solicited from ~~the office and~~ the respective heads of the
918 Department of Community Affairs, the Department of
919 Transportation and its district offices, the Department of
920 Agriculture and Consumer Services, the Fish and Wildlife
921 Conservation Commission, appropriate regional planning councils,
922 appropriate water management districts, and voluntarily
923 participating municipalities and counties. The memoranda of
924 agreement should also accommodate participation in this
925 expedited process by other local governments and federal
926 agencies as circumstances warrant.

927 (5) In order to facilitate local government's option to
928 participate in this expedited review process, the secretary

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929 shall, in cooperation with local governments and participating
930 state agencies, create a standard form memorandum of agreement.
931 The standard form of the memorandum of agreement shall be used
932 only if the local government participates in the expedited
933 review process. In the absence of local government
934 participation, only the project-specific memorandum of agreement
935 executed pursuant to subsection (4) applies. A local government
936 shall hold a duly noticed public workshop to review and explain
937 to the public the expedited permitting process and the terms and
938 conditions of the standard form memorandum of agreement.

939 (10) The memoranda of agreement may provide for the waiver
940 or modification of procedural rules prescribing forms, fees,
941 procedures, or time limits for the review or processing of
942 permit applications under the jurisdiction of those agencies
943 that are members of the regional permit action team ~~party to the~~
944 ~~memoranda of agreement~~. Notwithstanding any other provision of
945 law to the contrary, a memorandum of agreement must to the
946 extent feasible provide for proceedings and hearings otherwise
947 held separately ~~by the parties to the memorandum of agreement~~ to
948 be combined into one proceeding or held jointly and at one
949 location. Such waivers or modifications shall not be available
950 for permit applications governed by federally delegated or
951 approved permitting programs, the requirements of which would
952 prohibit, or be inconsistent with, such a waiver or
953 modification.

954 (11) The ~~standard form for~~ memoranda of agreement shall
955 include guidelines to be used in working with state, regional,
956 and local permitting authorities. Guidelines may include, but
957 are not limited to, the following:

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958 (a) A central contact point for filing permit applications
959 and local comprehensive plan amendments and for obtaining
960 information on permit and local comprehensive plan amendment
961 requirements;

962 (b) Identification of the individual or individuals within
963 each respective agency who will be responsible for processing
964 the expedited permit application or local comprehensive plan
965 amendment for that agency;

966 (c) A mandatory preapplication review process to reduce
967 permitting conflicts by providing guidance to applicants
968 regarding the permits needed from each agency and governmental
969 entity, site planning and development, site suitability and
970 limitations, facility design, and steps the applicant can take
971 to ensure expeditious permit application and local comprehensive
972 plan amendment review. As a part of this process, the first
973 interagency meeting to discuss a project shall be held within 14
974 days after the secretary's determination that the project is
975 eligible for expedited review. Subsequent interagency meetings
976 may be scheduled to accommodate the needs of participating local
977 governments that are unable to meet public notice requirements
978 for executing a memorandum of agreement within this timeframe.
979 This accommodation may not exceed 45 days from the secretary's
980 determination that the project is eligible for expedited review;

981 (d) The preparation of a single coordinated project
982 description form and checklist and an agreement by state and
983 regional agencies to reduce the burden on an applicant to
984 provide duplicate information to multiple agencies;

985 (e) Establishment of a process for the adoption and review
986 of any comprehensive plan amendment needed by any certified

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987 project within 90 days after the submission of an application
988 for a comprehensive plan amendment. However, the memorandum of
989 agreement may not prevent affected persons as defined in s.
990 163.3184 from appealing or participating in this expedited plan
991 amendment process and any review or appeals of decisions made
992 under this paragraph; and

993 (f) Additional incentives for an applicant who proposes a
994 project that provides a net ecosystem benefit.

995 (15) The secretary ~~office~~, working with the agencies
996 providing cooperative assistance and input regarding the
997 memoranda of agreement, shall review sites proposed for the
998 location of facilities eligible for the Innovation Incentive
999 Program under s. 288.1089. Within 20 days after the request for
1000 the review by the secretary ~~office~~, the agencies shall provide
1001 to the secretary ~~office~~ a statement as to each site's necessary
1002 permits under local, state, and federal law and an
1003 identification of significant permitting issues, which if
1004 unresolved, may result in the denial of an agency permit or
1005 approval or any significant delay caused by the permitting
1006 process.

1007 (17) The secretary ~~office~~ shall be responsible for
1008 certifying a business as eligible for undergoing expedited
1009 review under this section. Enterprise Florida, Inc., a county or
1010 municipal government, or the Rural Economic Development
1011 Initiative may recommend to the secretary ~~Office of Tourism,~~
1012 ~~Trade, and Economic Development~~ that a project meeting the
1013 minimum job creation threshold undergo expedited review.

1014 (18) The secretary ~~office~~, working with the Rural Economic
1015 Development Initiative and the regional permit action team

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1016 ~~agencies participating in the memoranda of agreement,~~ shall
1017 provide technical assistance in preparing permit applications
1018 and local comprehensive plan amendments for counties having a
1019 population of fewer than 75,000 residents, or counties having
1020 fewer than 125,000 residents which are contiguous to counties
1021 having fewer than 75,000 residents. Additional assistance may
1022 include, but not be limited to, guidance in land development
1023 regulations and permitting processes, working cooperatively with
1024 state, regional, and local entities to identify areas within
1025 these counties which may be suitable or adaptable for
1026 preclearance review of specified types of land uses and other
1027 activities requiring permits.

1028 Section 24. Subsection (10) of section 163.3180, Florida
1029 Statutes, is amended to read:

1030 163.3180 Concurrency.-

1031 (10) (a) Except in transportation concurrency exception
1032 areas, with regard to roadway facilities on the Strategic
1033 Intermodal System designated in accordance with s. 339.63, local
1034 governments shall adopt the level-of-service standard
1035 established by the Department of Transportation by rule.
1036 However, if the Office of Tourism, Trade, and Economic
1037 Development concurs in writing with the local government that
1038 the proposed development is for a qualified job creation project
1039 under s. 288.0656 or s. 403.973, the affected local government,
1040 after consulting with the Department of Transportation, may
1041 provide for a waiver of transportation concurrency for the
1042 project. For all other roads on the State Highway System, local
1043 governments shall establish an adequate level-of-service
1044 standard that need not be consistent with any level-of-service

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1045 standard established by the Department of Transportation. In
1046 establishing adequate level-of-service standards for any
1047 arterial roads, or collector roads as appropriate, which
1048 traverse multiple jurisdictions, local governments shall
1049 consider compatibility with the roadway facility's adopted
1050 level-of-service standards in adjacent jurisdictions. Each local
1051 government within a county shall use a professionally accepted
1052 methodology for measuring impacts on transportation facilities
1053 for the purposes of implementing its concurrency management
1054 system. Counties are encouraged to coordinate with adjacent
1055 counties, and local governments within a county are encouraged
1056 to coordinate, for the purpose of using common methodologies for
1057 measuring impacts on transportation facilities for the purpose
1058 of implementing their concurrency management systems.

1059 (b) There shall be a limited exemption from Strategic
1060 Intermodal System adopted level-of-service standards for new or
1061 redevelopment projects consistent with the local comprehensive
1062 plan as inland multimodal facilities receiving or sending cargo
1063 for distribution and providing cargo storage, consolidation,
1064 repackaging, and transfer of goods, and which may, if developed
1065 as proposed, include other intermodal terminals, related
1066 transportation facilities, warehousing and distribution
1067 facilities, and associated office space, light industrial,
1068 manufacturing, and assembly uses. The limited exemption applies
1069 if the project meets all of the following criteria:

1070 1. The project will not cause the adopted level-of-service
1071 standards for the Strategic Intermodal System facilities to be
1072 exceeded by more than 150 percent within the first 5 years of
1073 the project's development.

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1074 2. The project, upon completion, would result in the
1075 creation of at least 50 full-time jobs.

1076 3. The project is compatible with existing and planned
1077 adjacent land uses.

1078 4. The project is consistent with local and regional
1079 economic development goals or plans.

1080 5. The project is proximate to regionally significant road
1081 and rail transportation facilities.

1082 6. The project is proximate to a community having an
1083 unemployment rate, as of the date of the development order
1084 application, which is 10 percent or more above the statewide
1085 reported average.

1086 Section 25. Subsections (1) and (2), paragraph (c) of
1087 subsection (3), and subsection (4) of section 373.4137, Florida
1088 Statutes, are amended to read:

1089 373.4137 Mitigation requirements for specified
1090 transportation projects.—

1091 (1) The Legislature finds that environmental mitigation for
1092 the impact of transportation projects proposed by the Department
1093 of Transportation or a transportation authority established
1094 pursuant to chapter 348 or chapter 349 can be more effectively
1095 achieved by regional, long-range mitigation planning rather than
1096 on a project-by-project basis. It is the intent of the
1097 Legislature that mitigation to offset the adverse effects of
1098 these transportation projects be funded by the Department of
1099 Transportation and be carried out by the water management
1100 districts, including the use of mitigation banks and any other
1101 mitigation options that satisfy state and federal requirements,
1102 including, but not limited to, 33 U.S.C. s. 332.3(b) established

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1103 ~~pursuant to this part.~~

1104 (2) Environmental impact inventories for transportation
1105 projects proposed by the Department of Transportation or a
1106 transportation authority established pursuant to chapter 348 or
1107 chapter 349 shall be developed as follows:

1108 (a) By July 1 of each year, the Department of
1109 Transportation or a transportation authority established
1110 pursuant to chapter 348 or chapter 349 which chooses to
1111 participate in this program shall submit to the water management
1112 districts a list ~~copy~~ of its projects in the adopted work
1113 program and an environmental impact inventory of habitats
1114 addressed in the rules adopted pursuant to this part and s. 404
1115 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted
1116 by its plan of construction for transportation projects in the
1117 next 3 years of the tentative work program. The Department of
1118 Transportation or a transportation authority established
1119 pursuant to chapter 348 or chapter 349 may also include in its
1120 environmental impact inventory the habitat impacts of any future
1121 transportation project. The Department of Transportation and
1122 each transportation authority established pursuant to chapter
1123 348 or chapter 349 may fund any mitigation activities for future
1124 projects using current year funds.

1125 (b) The environmental impact inventory shall include a
1126 description of these habitat impacts, including their location,
1127 acreage, and type; state water quality classification of
1128 impacted wetlands and other surface waters; any other state or
1129 regional designations for these habitats; and a list ~~survey~~ of
1130 threatened species, endangered species, and species of special
1131 concern affected by the proposed project.

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1132 (3)

1133 (c) Except for current mitigation projects in the

1134 monitoring and maintenance phase and except as allowed by

1135 paragraph (d), the water management districts may request a

1136 transfer of funds from an escrow account no sooner than 30 days

1137 prior to the date the funds are needed to pay for activities

1138 associated with development or implementation of the approved

1139 mitigation plan described in subsection (4) for the current

1140 fiscal year, including, but not limited to, design, engineering,

1141 production, and staff support. Actual conceptual plan

1142 preparation costs incurred before plan approval may be submitted

1143 to the Department of Transportation or the appropriate

1144 transportation authority each year with the plan. The conceptual

1145 plan preparation costs of each water management district will be

1146 paid from mitigation funds associated with the environmental

1147 impact inventory for the current year. The amount transferred to

1148 the escrow accounts each year by the Department of

1149 Transportation and participating transportation authorities

1150 established pursuant to chapter 348 or chapter 349 shall

1151 correspond to a cost per acre of \$75,000 multiplied by the

1152 projected acres of impact identified in the environmental impact

1153 inventory described in subsection (2). However, the \$75,000 cost

1154 per acre does not constitute an admission against interest by

1155 the state or its subdivisions nor is the cost admissible as

1156 evidence of full compensation for any property acquired by

1157 eminent domain or through inverse condemnation. Each July 1, the

1158 cost per acre shall be adjusted by the percentage change in the

1159 average of the Consumer Price Index issued by the United States

1160 Department of Labor for the most recent 12-month period ending

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1161 September 30, compared to the base year average, which is the
1162 average for the 12-month period ending September 30, 1996. Each
1163 quarter, the projected acreage of impact shall be reconciled
1164 with the acreage of impact of projects as permitted, including
1165 permit modifications, pursuant to this part and s. 404 of the
1166 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer
1167 of funds shall be adjusted accordingly to reflect the acreage of
1168 impacts as permitted. The Department of Transportation and
1169 participating transportation authorities established pursuant to
1170 chapter 348 or chapter 349 are authorized to transfer such funds
1171 from the escrow accounts to the water management districts to
1172 carry out the mitigation programs. Environmental mitigation
1173 funds that are identified or maintained in an escrow account for
1174 the benefit of a water management district may be released if
1175 the associated transportation project is excluded in whole or
1176 part from the mitigation plan. For a mitigation project that is
1177 in the maintenance and monitoring phase, the water management
1178 district may request and receive a one-time payment based on the
1179 project's expected future maintenance and monitoring costs. Upon
1180 disbursement of the final maintenance and monitoring payment,
1181 the department or the participating transportation authorities'
1182 obligation will be satisfied, the water management district will
1183 have continuing responsibility for the mitigation project, and
1184 the escrow account for the project established by the Department
1185 of Transportation or the participating transportation authority
1186 may be closed. Any interest earned on these disbursed funds
1187 shall remain with the water management district and must be used
1188 as authorized under this section.

1189 (4) Prior to March 1 of each year, each water management

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1190 district, in consultation with the Department of Environmental
1191 Protection, the United States Army Corps of Engineers, the
1192 Department of Transportation, participating transportation
1193 authorities established pursuant to chapter 348 or chapter 349,
1194 and other appropriate federal, state, and local governments, and
1195 other interested parties, including entities operating
1196 mitigation banks, shall develop a plan for the primary purpose
1197 of complying with the mitigation requirements adopted pursuant
1198 to this part and 33 U.S.C. s. 1344. In developing such plans,
1199 the districts shall utilize sound ecosystem management practices
1200 to address significant water resource needs and shall focus on
1201 activities of the Department of Environmental Protection and the
1202 water management districts, such as surface water improvement
1203 and management (SWIM) projects and lands identified for
1204 potential acquisition for preservation, restoration or
1205 enhancement, and the control of invasive and exotic plants in
1206 wetlands and other surface waters, to the extent that such
1207 activities comply with the mitigation requirements adopted under
1208 this part and 33 U.S.C. s. 1344. In determining the activities
1209 to be included in such plans, the districts shall also consider
1210 the purchase of credits from public or private mitigation banks
1211 permitted under s. 373.4136 and associated federal authorization
1212 and shall include such purchase as a part of the mitigation plan
1213 when such purchase would offset the impact of the transportation
1214 project, provide equal benefits to the water resources than
1215 other mitigation options being considered, and provide the most
1216 cost-effective mitigation option. The mitigation plan shall be
1217 submitted to the water management district governing board, or
1218 its designee, for review and approval. At least 14 days prior to

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1219 approval, the water management district shall provide a copy of
1220 the draft mitigation plan to any person who has requested a
1221 copy.

1222 (a) For each transportation project with a funding request
1223 for the next fiscal year, the mitigation plan must include a
1224 brief explanation of why a mitigation bank was or was not chosen
1225 as a mitigation option, including an estimation of identifiable
1226 costs of the mitigation bank and nonbank options to the extent
1227 practicable.

1228 (b) Specific projects may be excluded from the mitigation
1229 plan, in whole or in part, and shall not be subject to this
1230 section upon the election ~~agreement~~ of the Department of
1231 Transportation, ~~or~~ a transportation authority if applicable, or
1232 ~~and~~ the appropriate water management district ~~that the inclusion~~
1233 ~~of such projects would hamper the efficiency or timeliness of~~
1234 ~~the mitigation planning and permitting process. The water~~
1235 ~~management district may choose to exclude a project in whole or~~
1236 ~~in part if the district is unable to identify mitigation that~~
1237 ~~would offset impacts of the project.~~

1238 Section 26. This act shall take effect upon becoming a law.

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 Environmental Preservation and Conservation Committee

BILL: CS/SB 1514

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Permitting of Consumptive Uses of Water

DATE: March 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Fav/CS
2.			AG	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) requires water management districts (WMD) to issue 20-year consumptive use permits (CUP). It eliminates an applicant’s requirement to provide reasonable assurances to a WMD in order to receive 20-year CUP. It also eliminates the requirement that permit holders submit a 10-year compliance report for their CUPs. The CS requires WMD governing boards to modify existing permits, if requested by the permit holder, to comply with the new requirements. The CS specifies how WMDs should evaluate CUP applications in mandatory reuse zones but exempts agricultural uses from this requirement. The CS creates a new type of permit called a “sustainable water use permit” for public water utilities. The CS adds an additional criterion to the list of factors a WMD governing board must consider when funding a water supply development project. Finally, the CS requires the WMDs, in consultation with the Department of Environmental Protection (DEP), to examine options to better coordinate CUPs with water supply planning and report findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives.

This CS substantially amends s. 373.236, 373.250, 373.2234, 373.243 and 373.707 and creates s. 373.255, Florida Statutes. It also creates an unnumbered section of law.

II. Present Situation:

Permitting of Consumptive Uses of Water

The Water Resources Act of 1972 (Act) provides for a two-tiered administrative structure governing water quality and consumption.¹ The Department of Natural Resources (now the DEP) was given general supervisory authority to coordinate statewide efforts for water management.² In addition, the Act created six WMDs along hydrological boundaries.³ Each WMD has broad regulatory authority for managing water resources and has ad valorem taxing authority to raise revenue for water management purposes.⁴ One of the most important aspects of the Act was the establishment of minimum flows and levels for the state's surface waters and groundwaters.⁵ The goal of establishing such levels is to ensure there will be enough water to satisfy consumptive use and public purposes, such as swimming, boating and environmental protection. By establishing minimum flows and levels for non-consumptive use, water managers, theoretically, will be able to establish how much water is available for consumptive use.

The WMDs administer the CUP program pursuant to Part II, ch. 373, F.S. The program includes permitting, compliance and enforcement. Any entity or person who wants to use water for certain types of activities, except those exempted by statute or rule, is required to obtain a CUP. These permits are issued for finite durations and, upon expiration, must be renewed. No entity or type of use is given priority over another. However, when two or more applications are pending for a quantity of water that is not available to satisfy both permits, the DEP or governing board grants the permit to the applicant whose activities best serve the public interest. In this instance, preference is also given to applications for renewal over initial applications.⁶

Currently, the DEP and the WMDs may issue a CUP for a period of 20 years if requested, provided there is sufficient data that provides reasonable assurance that the conditions of the permit will be met during the duration of the permit. A CUP may be issued for period of up to 50 years if the related construction bonds for waterworks and waste disposal facilities require a longer period. In addition, the DEP and a WMD may require compliance reporting every 10 years as a condition of the permit.⁷ CUPs for the development of alternative water supplies must be granted for periods of at least 20 years and require compliance reporting. Both the Southwest Florida and South Florida WMDs allocate enough water in their respective CUPs to satisfy the expected usage at the end of the CUP's duration. For example, an applicant requests a 100,000 gallon per day CUP for 20 years. The applicant expects 15 percent usage increase over the duration of the CUP. The Southwest Florida and South Florida WMDs will allocate 115,000 gallons per day on day one of the CUP to account for the increased demand 20 years later.

¹ The act was based on the first four chapters of *A Model Water Code*. Frank E. Maloney, et al., *A Model Water Code with Commentary* (Univ. of Fla. Press 1972).

² Section 373.026(7), F.S.

³ In 1977, the Florida Legislature dissolved the Ridge and Lower Gulf Coast WMD and divided its territory between the South Florida and Southwest Florida WMDs. See ch.77-104, s. 113, Laws of Fla.

⁴ Fla. CONST. art. VII, s. 9.

⁵ Maloney, *supra* note 1. See also s. 373.042(1), F.S.

⁶ See s. 373.223, F.S.

⁷ Chapter 2010-205, s. 55, Laws of Fla.

Section 373.219, F.S., gives the WMDs the authority to define the requirements for issuance of these permits. Such requirements, however, must follow a set of conditions enumerated in s. 373.223(1), F.S. These conditions state a three-prong test applicants must meet for the water use to be accepted:

- Is the use a reasonable-beneficial use as defined in statute;
- Will the use interfere with any presently existing legal use of water; and
- Is the use consistent with the public interest?

Pursuant to their rulemaking authority, each WMD has adopted rules that detail when and what type of permit, individual or general, an applicant may need.⁸

Generally, WMDs require a CUP when:

- The planned withdraw exceeds 100,000 gallons per day, or
- The outside diameter of the groundwater well is six inches or larger, or
- The outside diameter of the withdrawal pipe from a surface water is four inches or larger, or
- The total withdrawal capacity of the system is one million gallons per day or larger.

Some exceptions to these general guidelines exist and are generally based on the individual hydrologic conditions of certain areas within the district. Traditional exemptions for this permitting program include, single family homes or duplexes, fire fighting water wells, salt water use and reclaimed water use.

Reuse of Reclaimed Water

The promotion of reuse of reclaimed water is established in ss. 403.064 and 373.250, F.S., as a formal state objective. The DEP and WMDs maintain the largest and most comprehensive inventory of permitted reuse systems in the country. The inventory allows the state to monitor progress on reclaimed water efforts and further promote and expand its uses in Florida. In addition, the inventory provides municipalities and utilities interested in developing reuse programs access to other communities and utilities that have already implemented reuse programs.⁹ Reuse of reclaimed water is used to supplement use of potable water sources for public use purposes. Those purposes may include:¹⁰

- Public access areas and landscape irrigation,
- Agricultural irrigation,
- Groundwater recharge and indirect potable reuse,
- Industrial,
- Toilet flushing,
- Fire protection, and
- Wetlands.

⁸ See the following Florida Administrative Code rules for each district's criteria: 40A-2 (Northwest Florida); 40B-2 (Suwannee River); 40C-2 (St. Johns River); 40D-2 (Southwest Florida); and 40E-2 (South Florida).

⁹ Florida Dep't of Environmental Protection, *2009 Water Reuse Inventory*, available at http://dep.state.fl.us/water/reuse/docs/inventory/2009_reuse-report.pdf (last visited Mar. 28, 2011).

¹⁰ *Id.* at 5.

Wastewater facilities having permitted capacities of 0.1 million gallons per day (mgd) or greater provide annual reports to the DEP for inclusion in the reuse inventory.¹¹ In 2009, there were a total of 548 wastewater facilities with a combined permitted capacity of 2,497 mgd and a total actual flow of 1,555 mgd. Not all facilities have reuse programs; however, the total permitted capacity of reuse is 1,559 mgd. In 2009, 673 mgd of reclaimed water was reused.¹² The reclaimed water was used to irrigate 276,471 residences, 533 golf course, 873 parks and 306 schools.¹³ As may be expected, reuse in the St. Johns River, Southwest Florida and South Florida WMDs accounted for nearly 90 percent of all reuse in 2009.¹⁴ These three WMDs are the only ones where mandatory reuse zones have been created by local governments.¹⁵

Mandatory Reuse Zones

Mandatory reuse zones are established by local governments and prohibit the use of other water sources when reclaimed water is available. Regulating reuse is not as simple as traditional sources of water. The WMDs contend that reuse falls under the regulatory authority of Part II, ch. 373, F.S., which governs permitting of consumptive uses of water. On the other hand, utilities contend that reuse is a product they created and therefore have sole discretionary control over it.¹⁶ Because of this, potential conflicts of regulatory authority arise in mandatory reuse zones. To address this situation, the St. Johns River WMD and a local government have developed ordinance language that allows for reuse in these zones unless the WMD authorizes another water source.¹⁷ However, better coordination is needed between the WMDs, local governments and public water utilities.

Alternative Water Supply Development

Passed during the 2005 Legislative Session, SB 444 added major revisions to Part I, ch. 373, F.S. It marked the first time in Florida that alternative water resource development, and the money for such, was implemented. The amendments provided numerous changes to Florida water protection and alternative water supply development programs. The primary goal of SB 444 was to create a \$100 million annual funding program entitled the “Water Protection and Sustainability Program” to assist in the implementation of many existing water protection and development programs.¹⁸ In addition, funding was provided for a new alternative water supply development program. Section 373.707(8)(f), F.S., requires the WMD governing boards to prioritize financial assistance for development of alternative water supplies. The governing boards may establish factors to determine funding but must give significant weight to nine criteria contained in this subsection.

¹¹ See rule 62-610, F.A.C.

¹² See *supra* note 9, at 3.

¹³ See *supra* note 9, at 2.

¹⁴ See *supra* note 9, at 7.

¹⁵ Florida Dep’t of Environmental Protection, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings*, available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Mar. 28, 2011).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ See ch. 2005-291, s. 3, Laws of Fla. Also, state funding has not been provided for alternative water supply development for the past two fiscal years.

III. Effect of Proposed Changes:

Section 1 amends s. 373.236, F.S., to require the WMDs to issue 20-year CUPs. Reasonable assurance from the applicant that the conditions of the permit will be met over the life of the CUP is no longer required. Applicants may request a shorter duration. It removes the requirement that WMDs inform agriculture of the availability of 20-year CUPs. The changes made to this section of the CS make this requirement obsolete. Additionally, the CS eliminates the requirement that permit holders submit 10-year compliance reports to the DEP or the governing board of a WMD. The CS allows CUP holders to request permit modification to bring them into compliance with these changes.

Section 2 amends s. 373.250, F.S., to add a new section related to mandatory reuse zones. The CS requires the WMDs to recognize mandatory reuse zones established by local governments. When evaluating a CUP application for use in a mandatory reuse zone, a WMD must consider the following:

- If reclaimed water is available and technically and environmentally feasible for the proposed use, a WMD shall presume it is economically feasible as well. The applicant has the burden of proof to show otherwise;
- Applicants in these zones are required to consider the feasibility of reclaimed water for nonpotable uses. This requirement extends to all regulated water uses, except for those that are exempt from permitting; and
- In a mandatory reuse zone, reclaimed water use is given priority over all other water sources for nonpotable use. Using reclaimed water is required if it is technically, environmentally and economically feasible.

The CS does not limit the ability of a reuse utility, local government or special district from prohibiting using potable water for nonpotable uses when reclaimed water can meet the demand. The CS exempts agricultural uses on agricultural lands from the provisions of this section; however, it does not affect the authority of a WMD to consider reuse for agricultural permits.

Section 3 creates s. 373.255, F.S., to create a new type of water use permit called a “sustainable water use permit.” The CS directs the WMDs to implement this permit program for public water utilities. Specifically the program:

- Provides for a single permitting process authorizing water use from multiple sources;
- Emphasizes alternative water sources;
- Encourages storage of excess surface water flows or water from alternative water supplies in reservoirs, aquifer storage and recovery wellfields or other means of storage for recovery;
- Allows recovery of stored water;
- Allows groundwater usage during droughts; and
- Preserves traditional water sources for future generations.

In its application, a public water utility must identify each source it may draw from and demonstrate, for each source, that the withdrawal meets the three-prong test in s. 373.223(1), F.S., and noted previously in this analysis.

The permit must specify all sources a utility may withdraw from and the conditions under which a withdrawal may occur. However, it may be issued without specifying the quantity of water that may be withdrawn from each source. The CS specifies that these permits are issued for 20 years with reasonable assurances for renewal in the absence of quantifiable changed conditions.

Sections 4 and 5 amend ss. 373.2234 and 373.243, respectively, to provide conforming changes for the changes contained in this CS for issuance of 20-year CUPs.

Section 6 amends s. 373.707, F.S., to add an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

Section 7 creates an unnumbered section of law. The CS requires each WMD, in coordination with the DEP, to examine options to better coordinate CUPs with water supply planning by extending and reconciling CUP durations so they expire and can be renewed simultaneously in a given basin. Each WMD must report its findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2012.

Section 8 provides an effective date of July 1, 2011.

Other Potential Implications:

In creating a new type of water use permit outside of the normal permitting process contained in s. 373.229, F.S., the CS puts public water utilities in a unique position. No other category of user may have access to this new permit type. The intent of this is unclear, but it may have the effect of prioritizing permitting for public water utilities simply because they have their own permitting process. Additionally, a permit may be issued to a public water utility without specifying the quantity of water allocated from each source it is permitted to draw from. The WMDs have expressed concern that this ties up the entire allocation for each water source. For example, if a public water utility has a 50 mgd permit and is permitted to draw from groundwater, surface water and a reservoir, it may draw 50 mgd from any of the three sources alone or a combination of the three. Under this scenario the permitting WMD would have to reserve a 50 mgd allocation for the public water utility from each source, or 150 mgd. This effectively ties up 100 mgd more than the permitted allocation.

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:

CUPS

Costs for preparing CUP applications will decrease because applicants will no longer have to provide reasonable assurances they can meet the conditions of CUPs for their duration in order to receive 20-year permits. Additionally, compliance reporting costs will be eliminated as the report is no longer required. For applicants in the Southwest or South Florida WMDs, if there is not enough water to adequately satisfy their application requests, they may be required to provide their own water sources, either through development or purchase, or not conduct the activity they requested for the CUP. Developing or buying water allocations is a significant expense but can only be evaluated on a case-by-case basis. Thus, the fiscal impact cannot be determined at this point.

Reuse

Applicants for CUPs in mandatory reuse zones will bear the burden of proving that using reclaimed water is not economically feasible for their purposes. Agricultural operations will not bear this burden as they are exempt.

Sustainable Use Permit

Allowing public water utilities to access their total allocations from any of the sources they are permitted to draw from may have negative impacts on existing and future allocations for current permit holders and future applicants. The costs associated with any potential impacts cannot be determined.

C. Government Sector Impact:

CUPS

Costs for reviewing CUP applications will decrease as reasonable assurance will no longer be included in the application. Additionally, costs for reviewing compliance reports will be eliminated as the report is no longer required.

Reuse

The WMDs expect they can meet the requirements of this section of the CS with existing staff and resources.

Sustainable Use Permit

Although the WMDs currently administer the CUP program for public water utilities, creating a new permit process will require additional expenses and staff time. The WMDs

expect they can meet the requirements of this section of the CS with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 March 30, 2011:

Agricultural uses for water are exempt from the mandatory reuse zone requirements contained in this CS. The WMDs still have the authority to consider the feasibility of using reclaimed water in any permit for agricultural use of water. The CS modifies one criterion of the sustainable use permit to allow capture and recovery from alternative water supply sources. Lastly, the CS adds an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

- B. **Amendments:**

None.



684730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment

Delete lines 184 - 185
and insert:

(c) Stores excess captured surface water flow or water from
an alternative water supply as defined in s. 373.019(20) in off-
stream reservoirs, aquifer storage and recovery wellfields, or
other means of storage for recovery.



363968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 266 and 267
insert:

Section 6. Paragraph (f) of subsection (8) of section
373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects
that will be selected for financial assistance. The governing
boards may establish factors to determine project funding;
however, significant weight shall be given to the following



363968

13 factors:

14 1. Whether the project provides substantial environmental
15 benefits by preventing or limiting adverse water resource
16 impacts.

17 2. Whether the project reduces competition for water
18 supplies.

19 3. Whether the project brings about replacement of
20 traditional sources in order to help implement a minimum flow or
21 level or a reservation.

22 4. Whether the project will be implemented by a consumptive
23 use permittee that has achieved the targets contained in a goal-
24 based water conservation program approved pursuant to s.
25 373.227.

26 5. The quantity of water supplied by the project as
27 compared to its cost.

28 6. Projects in which the construction and delivery to end
29 users of reuse water is a major component.

30 7. Whether the project will be implemented by a
31 multijurisdictional water supply entity or regional water supply
32 authority.

33 8. Whether the project implements reuse that assists in the
34 elimination of domestic wastewater ocean outfalls as provided in
35 s. 403.086(9).

36 9. Whether the county or municipality, or the multiple
37 counties or municipalities, in which the project is located has
38 implemented a high-water recharge protection tax assessment
39 program as provided in s. 193.625.

40 10. Whether the project provides additional storage
41 capacity of surface water flows to ensure sustainability of the



363968

42 public water supply.

43

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

45 And the title is amended as follows:

46 Delete line 26

47 and insert:

48 references; amending s. 373.707, F.S.; providing an
49 additional weighting factor that the governing board
50 may consider when determining which alternative water
51 supply projects to select for financial assistance;
52 directing each water management district



287570

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment

Delete lines 148 - 173
and insert:

(4) (a) In evaluating an application for the consumptive use of water, other than for an agricultural use on land that has been classified as agricultural pursuant to s. 193.461, a water management district shall recognize a mandatory reuse zone that is created by the local government or a special district pursuant to applicable law and that requires persons specified by the local government or special district to connect to a reclaimed water system for irrigation and other non-potable



287570

13 uses, as follows:

14 1. Where reclaimed water is available and technically and
15 environmentally feasible for the proposed use, the water
16 management district shall presume that reclaimed water is
17 economically feasible in a mandatory reuse zone, and an
18 applicant bears the burden of overcoming the presumption;

19 2 Any applicant in a mandatory reuse zone seeking
20 authorization for a nonpotable use shall consider the
21 feasibility of using available reclaimed water. This requirement
22 applies to all regulated water uses, regardless of type of
23 permit or authorization, excluding exemptions from permitting;
24 and

25 3. In a mandatory reuse zone, the use of reclaimed water
26 shall be prioritized over other water sources for nonpotable
27 uses and shall be required if determined to be technically,
28 environmentally, and economically feasible.

29 (b) This subsection does not limit the ability of a reuse
30 utility, the local government, or a special district to restrict
31 the use of potable water supplied by the potable water
32 distribution system serving its customers for the purposes of
33 irrigation or other nonpotable uses that may be met by reclaimed
34 water. This subsection does not affect the authority of a water
35 management district to consider the feasibility of using
36 reclaimed water in any permit application for the agricultural
37 use of water.



116348

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 142.

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

And the title is amended as follows:

Delete lines 3 - 14

and insert:

water; amending s.



380672

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 174 - 266.

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

And the title is amended as follows:

Delete lines 18 - 26

and insert:

providing applicability; directing each water
management district



713016

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment

Delete line 173
and insert:
other nonpotable uses that may be met by reclaimed water. This subsection does not affect the authority of a water management district to consider the feasibility of using reclaimed water in any permit application for the agricultural use of water.



461200

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment

Delete line 149
and insert:
of water, other than for an agricultural use on land that has
been classified as agricultural pursuant to s. 193.461, a water
management district shall recognize a

By Senator Latvala

16-00531A-11

20111514

1 A bill to be entitled
2 An act relating to permitting of consumptive uses of
3 water; amending s. 373.236, F.S.; requiring
4 consumptive use permits to be issued for a period of
5 20 years; providing exceptions; deleting legislative
6 findings requiring the Department of Environmental
7 Protection to provide certain information to
8 agricultural applicants; eliminating requirements for
9 permit compliance reports; removing the authority of
10 the department and the water management district
11 governing boards to request permit compliance reports
12 and to modify or revoke consumptive use permits;
13 providing for the modification of existing consumptive
14 use permits under certain conditions; amending s.
15 373.250, F.S.; providing requirements for water
16 management districts in evaluating applications for
17 the consumptive use of water in mandatory reuse zones;
18 providing applicability; creating s. 373.255, F.S.;
19 requiring water management districts to implement a
20 sustainable water use permit program for public water
21 utilities; providing program criteria; providing
22 permit application and issuance requirements;
23 providing requirements for permit monitoring,
24 compliance, and performance metrics; amending ss.
25 373.2234 and 373.243, F.S.; conforming cross-
26 references; directing each water management district
27 to consult with the Department of Environmental
28 Protection to examine options for improving the
29 coordination between the consumptive use permitting

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30 process and the water supply planning process by
31 extending and reconciling certain permitting
32 provisions; requiring each water management district
33 to provide a report to the Governor and the
34 Legislature; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 373.236, Florida Statutes, is amended to
39 read:

40 373.236 Duration of permits; ~~compliance reports.~~-

41 (1) Permits shall be granted for a period of 20 years
42 unless an applicant requests that the permit be issued for a
43 shorter period of time, ~~if requested for that period of time, if~~
44 ~~there is sufficient data to provide reasonable assurance that~~
45 ~~the conditions for permit issuance will be met for the duration~~
46 ~~of the permit; otherwise, permits may be issued for shorter~~
47 ~~durations which reflect the period for which such reasonable~~
48 ~~assurances can be provided. The governing board or the~~
49 ~~department may base the duration of permits on a reasonable~~
50 ~~system of classification according to source of supply or type~~
51 ~~of use, or both.~~

52 ~~(2) The Legislature finds that some agricultural landowners~~
53 ~~remain unaware of their ability to request a 20-year consumptive~~
54 ~~use permit under subsection (1) for initial permits or for~~
55 ~~renewals. Therefore, the water management districts shall inform~~
56 ~~agricultural applicants of this option in the application form.~~

57 (2) ~~(3)~~ The governing board or the department may authorize
58 a permit of duration of up to 50 years in the case of a

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59 municipality or other governmental body or of a public works or
60 public service corporation where such a period is required to
61 provide for the retirement of bonds for the construction of
62 waterworks and waste disposal facilities.

63 ~~(4) Where necessary to maintain reasonable assurance that~~
64 ~~the conditions for issuance of a 20-year permit can continue to~~
65 ~~be met, the governing board or department, in addition to any~~
66 ~~conditions required pursuant to s. 373.219, may require a~~
67 ~~compliance report by the permittee every 10 years during the~~
68 ~~term of a permit. The Suwannee River Water Management District~~
69 ~~may require a compliance report by the permittee every 5 years~~
70 ~~through July 1, 2015, and thereafter every 10 years during the~~
71 ~~term of the permit. This report shall contain sufficient data to~~
72 ~~maintain reasonable assurance that the initial conditions for~~
73 ~~permit issuance are met. Following review of this report, the~~
74 ~~governing board or the department may modify the permit to~~
75 ~~ensure that the use meets the conditions for issuance. Permit~~
76 ~~modifications pursuant to this subsection shall not be subject~~
77 ~~to competing applications, provided there is no increase in the~~
78 ~~permitted allocation or permit duration, and no change in~~
79 ~~source, except for changes in source requested by the district.~~
80 ~~This subsection shall not be construed to limit the existing~~
81 ~~authority of the department or the governing board to modify or~~
82 ~~revoke a consumptive use permit.~~

83 (3)~~(5)~~ Permits approved for the development of alternative
84 water supplies shall be granted for a term of at least 20 years.
85 However, if the permittee issues bonds for the construction of
86 the project, upon request of the permittee prior to the
87 expiration of the permit, that permit shall be extended for such

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88 additional time as is required for the retirement of bonds, not
89 including any refunding or refinancing of such bonds, provided
90 that the governing board determines that the use will continue
91 to meet the conditions for the issuance of the permit. ~~Such a~~
92 ~~permit is subject to compliance reports under subsection (4).~~

93 (4)(6)(a) The Legislature finds that the need for
94 alternative water supply development projects to meet
95 anticipated public water supply demands of the state is so
96 important that it is essential to encourage participation in and
97 contribution to these projects by private-rural-land owners who
98 characteristically have relatively modest near-term water
99 demands but substantially increasing demands after the 20-year
100 planning period in s. 373.709. Therefore, where such landowners
101 make extraordinary contributions of lands or construction
102 funding to enable the expeditious implementation of such
103 projects, the governing board ~~water management districts~~ and the
104 department may grant permits for such projects for a period of
105 up to 50 years to municipalities, counties, special districts,
106 regional water supply authorities, multijurisdictional water
107 supply entities, and publicly or privately owned utilities, with
108 the exception of any publicly or privately owned utilities
109 created for or by a private landowner after April 1, 2008, which
110 have entered into an agreement with the private landowner for
111 the purpose of more efficiently pursuing alternative public
112 water supply development projects identified in a district's
113 regional water supply plan and meeting water demands of both the
114 applicant and the landowner.

115 ~~(b) A permit under paragraph (a) may be granted only for~~
116 ~~that period for which there is sufficient data to provide~~

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117 ~~reasonable assurance that the conditions for permit issuance~~
118 ~~will be met. Such a permit shall require a compliance report by~~
119 ~~the permittee every 5 years during the term of the permit. The~~
120 ~~report shall contain sufficient data to maintain reasonable~~
121 ~~assurance that the conditions for permit issuance applicable at~~
122 ~~the time of district review of the compliance report are met.~~
123 ~~After review of this report, the governing board or the~~
124 ~~department may modify the permit to ensure that the use meets~~
125 ~~the conditions for issuance. This subsection does not limit the~~
126 ~~existing authority of the department or the governing board to~~
127 ~~modify or revoke a consumptive use permit.~~

128 (5)~~(7)~~ A permit approved for a renewable energy generating
129 facility or the cultivation of agricultural products on lands
130 consisting of 1,000 acres or more for use in the production of
131 renewable energy, as defined in s. 366.91(2)(d), shall be
132 granted for a term of at least 25 years at the applicant's
133 request based on the anticipated life of the facility if there
134 is sufficient data to provide reasonable assurance that the
135 conditions for permit issuance will be met for the duration of
136 the permit; otherwise, a permit may be issued for a shorter
137 duration if requested by the applicant ~~that reflects the longest~~
138 ~~period for which such reasonable assurances are provided. Such a~~
139 ~~permit is subject to compliance reports under subsection (4).~~

140 (6) If requested by an existing consumptive use permit
141 holder, the governing board shall modify the permit to bring it
142 into compliance with this section.

143 Section 2. Subsections (4), (5), and (6) of section
144 373.250, Florida Statutes, are renumbered as subsections (5),
145 (6), and (7), respectively, and a new subsection (4) is added to

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146 that section to read:

147 373.250 Reuse of reclaimed water.—

148 (4) (a) In evaluating an application for the consumptive use
149 of water, a water management district shall recognize a
150 mandatory reuse zone created by a local government or special
151 district pursuant to applicable law that requires persons
152 specified by the local government or special district to connect
153 to a reclaimed water system for irrigation and other nonpotable
154 uses, as follows:

155 1. If reclaimed water is available and technically and
156 environmentally feasible for the proposed use, the water
157 management district shall presume that reclaimed water is
158 economically feasible in a mandatory reuse zone, and the
159 applicant shall bear the burden of overcoming the presumption.

160 2. Any applicant in a mandatory reuse zone seeking
161 authorization for a nonpotable use shall consider the
162 feasibility of using available reclaimed water. This requirement
163 applies to all regulated water uses, regardless of the type of
164 permit or authorization, excluding exemptions from permitting.

165 3. In a mandatory reuse zone, the use of reclaimed water
166 shall be prioritized over other water sources for nonpotable
167 uses and shall be required if determined to be technically,
168 environmentally, and economically feasible.

169 (b) This subsection does not limit the authority of a reuse
170 utility, local government, or special district to restrict the
171 use of potable water, supplied by the potable water distribution
172 system serving its customers, for the purposes of irrigation or
173 other nonpotable uses that may be met by reclaimed water.

174 Section 3. Section 373.255, Florida Statutes, is created to

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175 read:

176 373.255 Sustainable water use permit.-

177 (1) Each water management district shall implement a
178 sustainable water use permit program for public water utilities
179 that:

180 (a) Provides a single permitting process authorizing the
181 use of water from multiple water sources.

182 (b) Encourages and facilitates the use of alternative water
183 sources.

184 (c) Stores excess captured surface water flow in off-stream
185 reservoirs or aquifer storage and recovery wellfields.

186 (d) Recovers stored water in order to reliably meet public
187 demand.

188 (e) Provides for use of traditional groundwater as a
189 supplemental source during drought conditions when stored water
190 is reduced, to the extent necessary to meet the public demand
191 for water in a reliable and efficient manner.

192 (f) Preserves traditional water supply sources for use by
193 future generations.

194 (2) A public water utility applying for a sustainable water
195 use permit must identify each source from which water is
196 proposed to be withdrawn and demonstrate for each source that
197 the withdrawal is a reasonable-beneficial use as defined in s.
198 373.019, is consistent with the public interest, and will not
199 interfere with any presently existing legal use of water.

200 (3) A sustainable water use permit:

201 (a) Shall specify all sources from which water may be
202 withdrawn and the conditions under which such withdrawals may be
203 made in order to meet the reasonable public water supply demands

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204 of the utility.

205 (b) May be issued without specifying the quantity of water
206 that is permitted to be withdrawn from any individual source.

207 (c) Shall be issued for a period of not less than 20 years,
208 with the reasonable expectation of renewal in the absence of
209 readily quantifiable changed conditions.

210 (4) Monitoring, compliance, and performance metrics for
211 sustainable water use permits shall acknowledge and accommodate
212 the natural variability and inherent uncertainty of the climate,
213 weather, and hydrology of the relevant region while
214 simultaneously enabling public water supply utilities to meet
215 the potable water demands of their customers in a reliable,
216 efficient, and cost-effective manner.

217 Section 4. Section 373.2234, Florida Statutes, is amended
218 to read:

219 373.2234 Preferred water supply sources.—The governing
220 board of a water management district is authorized to adopt
221 rules that identify preferred water supply sources for
222 consumptive uses for which there is sufficient data to establish
223 that a preferred source will provide a substantial new water
224 supply to meet the existing and projected reasonable-beneficial
225 uses of a water supply planning region identified pursuant to s.
226 373.709(1), while sustaining existing water resources and
227 natural systems. At a minimum, such rules must contain a
228 description of the preferred water supply source and an
229 assessment of the water the preferred source is projected to
230 produce. If an applicant proposes to use a preferred water
231 supply source, that applicant's proposed water use is subject to
232 s. 373.223(1), except that the proposed use of a preferred water

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233 supply source must be considered by a water management district
234 when determining whether a permit applicant's proposed use of
235 water is consistent with the public interest pursuant to s.
236 373.223(1)(c). A consumptive use permit issued for the use of a
237 preferred water supply source must be granted, when requested by
238 the applicant, for at least a 20-year period ~~and may be subject~~
239 ~~to the compliance reporting provisions of s. 373.236(4)~~. Nothing
240 in this section shall be construed to exempt the use of
241 preferred water supply sources from the provisions of ss.
242 373.016(4) and 373.223(2) and (3), or be construed to provide
243 that permits issued for the use of a nonpreferred water supply
244 source must be issued for a duration of less than 20 years or
245 that the use of a nonpreferred water supply source is not
246 consistent with the public interest. Additionally, nothing in
247 this section shall be interpreted to require the use of a
248 preferred water supply source or to restrict or prohibit the use
249 of a nonpreferred water supply source. Rules adopted by the
250 governing board of a water management district to implement this
251 section shall specify that the use of a preferred water supply
252 source is not required and that the use of a nonpreferred water
253 supply source is not restricted or prohibited.

254 Section 5. Subsection (4) of section 373.243, Florida
255 Statutes, is amended to read:

256 373.243 Revocation of permits.—The governing board or the
257 department may revoke a permit as follows:

258 (4) For nonuse of the water supply allowed by the permit
259 for a period of 2 years or more, the governing board or the
260 department may revoke the permit permanently and in whole unless
261 the user can prove that his or her nonuse was due to extreme

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262 hardship caused by factors beyond the user's control. For a
263 permit issued pursuant to s. 373.236~~(5)-(7)~~, the governing board
264 or the department may revoke the permit only if the nonuse of
265 the water supply allowed by the permit is for a period of 4
266 years or more.

267 Section 6. In consultation with the Department of
268 Environmental Protection, each water management district is
269 directed to examine options for improving the coordination
270 between the consumptive use permitting process under part II of
271 chapter 373, Florida Statutes, and the water supply planning
272 process under part VII of chapter 373, Florida Statutes, by
273 extending and reconciling the duration of issued consumptive use
274 permits to provide for the simultaneous expiration and renewal
275 of the permits, at the request of an applicant, on a rolling
276 basin-specific basis. Each water management district shall
277 report its findings and recommendations to the Governor, the
278 President of the Senate, and the Speaker of the House of
279 Representatives by January 1, 2012. This section does not affect
280 the term of any consumptive use permit issued in accordance with
281 Florida law.

282 Section 7. This act shall take effect July 1, 2011.

BILL NOT RECEIVED

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 Health Regulation Committee

BILL: CS/CS/SB 1698

INTRODUCER: Environmental Preservation and Conservation Committee, Health Regulation Committee and Senator Dean

SUBJECT: Onsite Sewage Treatment

DATE: April 1, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Uchino	Yeatman	EP	Fav/CS
3.			CA	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This Committee Substitute for Committee Substitute (CS) for SB 1698 repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program (evaluation program), unless the county or municipality opts out and chooses not to participate in an evaluation program by resolution, which must be adopted before January 1, 2012, and filed with the Secretary of State. Counties that have first magnitude springs are prohibited from opting out.

If an evaluation program is adopted by a county or municipality by ordinance, this CS requires:

- A pump out and evaluation of a septic tank to be performed every five years, unless an exception applies.
- Certain persons to perform the pump out and evaluation.
- Notice to be given to septic tank owners at least 60 days before the septic tank is due for an evaluation.

- Penalties for qualified contractors and septic tank owners, who do not comply with the requirements of the evaluation program.
- Certain evaluation and assessment procedures to be followed during the inspection of a septic tank.
- A county or municipality to develop a database and establish a computerized tracking system based on evaluation reports submitted. The system, which may be Internet-based, is required to include certain information and notify homeowners when evaluations are due.
- A county or municipality to notify the Secretary of Environmental Protection upon the adoption of the ordinance establishing the program.
- The Department of Environmental Protection (DEP), within existing resources, to notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such local governments to model and establish low-interest loan programs.

The CS provides that a local ordinance may authorize the assessment of a fee not to exceed \$30 to cover the costs of administering the evaluation program.

This CS provides that a grant program will be available January 1, 2013, to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with any required inspection, pump out, repair, or system replacement. The CS also reduces the range of the fee amount that may be assessed by the DOH for an evaluation report.

The CS also:

- Defines “bedroom.”
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if, when the title is transferred, new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to \$15-30 from \$30-150.

This CS substantially amends the following sections of the Florida Statutes: 381.0065, 381.00656, and 381.0066.

This CS creates s. 381.00651, F.S.

II. Present Situation:

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.¹

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.²

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.³ The DOH's Bureau of Onsite Sewage develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (septic tanks) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal systems contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.⁴

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.⁵ This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (Report).⁶ According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

¹ See s. 381.006, F.S.

² Section 381.0065(2)(j), F.S.

³ Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Apr. 1, 2011).

⁴ Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Apr. 1, 2011).

⁵ See ch. 2008-152, Laws of Fla.

⁶ Florida Dep't of Health, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdffiles/forms/MSIP.pdf> (last visited Mar. 24, 2011).

The Report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the Report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and by today’s standards and may be under-designed. The DOH’s statistics indicate that approximately 2 million septic tanks are 20 years or older, which is the average lifespan of a septic tank in Florida.⁷ Because repairs of onsite systems were not regulated until 1987, many systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida’s pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.⁸

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.⁹ Depending on the sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.¹⁰

Minimum required treatment capacities for systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined from the Table¹¹ below.

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area in square feet	Minimum Required Treatment Capacity gallons per day
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

For each additional bedroom or each additional 750 square feet of building area, or fraction thereof, treatment capacity shall be increased by 100 gallons.

⁷ Dep’t of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Mar. 24, 2011). See also Dep’t of Health, Bureau of Onsite Sewage, *What’s New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on Mar. 24, 2011).

⁸ *Id.*

⁹ Rule 64E-6.001, F.A.C.

¹⁰ *Id.*

¹¹ Table adapted from Rule 64E-6.012, F.A.C.

Minimum design flows for systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family per dwelling unit the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for 2 bedrooms with 751-1,200 square feet, 200 gallons; for 3 bedrooms with 1,201-2,250 square feet, 300 gallons; and for 4 bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing are to be increased by 100 gallons per dwelling unit.¹²

Chapter 2010-205, Laws of Florida

In 2010, the Legislature enacted CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.¹³ The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

This law also establishes a grant program under s. 381.00656, F.S., for owners of septic tanks earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or system replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grant funds.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect, but no more than \$5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

Springs in Florida

Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day.¹⁴ Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

¹² Rule 64E-6.008, F.A.C.

¹³ However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

¹⁴ Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Apr. 1, 2011).

III. Effect of Proposed Changes:

The CS for SB 1698 defines “bedroom” because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms. The term “bedroom” is defined as a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

The CS provides that a permit issued and approved by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place. The CS also provides that a system is not considered “abandoned” if the properly functioning system is disconnected from a structure that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

- The reconnection of the system is to the same type and approximate size of the rebuilt structure that existed prior to the disaster;
- The system is not a sanitary nuisance; and
- The system has not been altered without prior authorization.

In addition, a system that serves a property that is foreclosed upon is not an abandoned system.

The CS provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.

The CS provides that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

The CS repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the DOH’s attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area. It contains an opt-out provision for local governments provided they

pass separate resolutions by a majority of the local elected body. Counties containing a first magnitude spring are prohibited from opting out.

If a county or municipality adopts an ordinance to implement an evaluation program, the county or municipality must notify the Secretary of State by letter of the adoption of the ordinance. If the county or municipality opts out of having an evaluation program, which must be done by adopting a resolution before January 1, 2012, the resolution opting out of having an evaluation program must be filed with the Secretary of State. However, a county or municipality that opts out of the program may, at a later date, adopt an ordinance imposing an evaluation program. A county or municipality may repeal an ordinance adopting an evaluation program if notification is provided to the Secretary of State by letter of repeal. A local ordinance may not deviate from or exceed the substantive requirements under s. 381.00651, F.S.

This CS requires the owner of an onsite sewage treatment and disposal system within a county's or municipality's jurisdiction that has implemented an evaluation program to have the system pumped out and evaluated at least once every five years to assess the fundamental operational condition of the system and to identify system failures. In addition to a pump out, the inspection procedures require the location of the system to be identified and the apparent structural condition of water tightness of the tank to be assessed and the size of the tank to be estimated. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects and baffles or tees must be checked to ensure that they are intact and secure.¹⁵ Furthermore, the evaluation must note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection.

However, a pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair, or modification of the system within the previous five years, the capacity is indicated on the documentation, and documentation shows the condition of the tank is structurally sound and watertight. Also, the local ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination.

This CS also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons, or alarms. The drainfield evaluation must include an overall assessment of the drainfield and a determination of the approximate size and location of the drainfield, state the condition of the surface vegetation and whether there is any seepage visible or excessively lush vegetation, state whether there is ponding water within the drainfield, and identify the location of any downspout or drain that encroaches or drains into the drainfield

¹⁵ The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at <http://www.inspectapedia.com/septic/tanktees.htm> (last visited Mar. 28, 2011).

area. If the system contains pumps, siphons, or alarms, the following information must be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether there are a check valve and purge hole;
- Whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, and its operational condition; and
- Whether surface water can infiltrate into the tank and whether the tank was pumped out.

This CS requires evaluations to be performed by a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.; a professional engineer licensed pursuant to ch. 471, F.S., who has experience with wastewater treatment systems; an environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation; or an employee working under the supervision of these individuals. All evaluation forms must be signed by a qualified contractor.

This CS also provides that the local ordinance:

- May not require an owner to repair, modify, or replace a system as a result of an evaluation unless the evaluation identifies a system failure. A “system failure” is defined as a condition existing within a system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system failure is not based on whether a system has a minimum separation distance between the drainfield and wet season water table, or if an obstruction in a sanitary line or effluent screen or filter prevents effluent from flowing into a drain.
- May not require more than the least costly remedial measure to resolve a system failure and the homeowner may choose the remedial measure. Remedial measures must meet the requirements of the code in effect at the time they are permitted and installed.
- Exempt systems that are required to obtain an operating permit or that are inspected by the DOH from the evaluation requirements.
- Require notice be given to the septic tank owner at least 60 days before the septic tank is due for an evaluation and the notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.
- May authorize the assessment of a fee not to exceed \$30 against the owner of the septic tank to cover the costs of administering the evaluation program.
- Provide penalties for qualified contractors and septic tank owners who do not comply with the requirements of the program.

The assessment procedure provided for in the CS requires:

- The qualified contractor to document the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner, the county or municipality, and the county health department;
- The local county health department to retain a copy of the evaluation report for a minimum of five years until a subsequent report is filed;

- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, drainfield problems, and water flow problems or maintenance needed; and
- An overall assessment of the fundamental operational condition of the system.

This CS requires a county or municipality that adopts an evaluation program to develop a database and establish a computerized tracking system based on evaluation reports submitted. The data and information collected is to be recorded and updated as evaluations are conducted and reported. The system, which may be Internet-based, is required notify homeowners when evaluations are due and the information tracked by the system must include:

- The addresses or locations of the onsite systems;
- The number of onsite systems within the local jurisdiction;
- The total number and types of system failures; and
- Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the systems.

This CS requires a county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program to notify the Secretary of Environmental Protection upon the adoption of an ordinance establishing the program. The DEP must, upon request and within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and provide guidance to the county or municipality in the application process to receive such funds. The DEP must also, upon request and within existing resources, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs.

This CS requires the DOH to administer a grant program, effective January 1, 2013, to assist low-income owners¹⁶ of onsite sewage treatment and disposal systems with the cost of required inspections, pump outs, repairs, or system replacements.

This CS requires system owners to pay a fee of not less than \$10 or more than \$15 to be used to fund the evaluation program, including a fee up to \$5 to be used toward the grant program under s. 381.00656, F.S.

This CS also reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

The CS provides that it will take effect upon becoming a law.

¹⁶ To be eligible for financial assistance, the owner must have a family income of less than or equal to 133 percent of the federal poverty level at the time of the application for assistance.

Other Potential Implications:

If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.¹⁷

The CS provides no grandfather clause for local governments that have existing evaluation programs. These local governments will either have to comply with the provisions of this CS or adopt resolutions to opt out. It is not clear whether a local government administering a septic tank evaluation program will be able to continue administering its existing evaluation program if it opts out.

The CS prohibits local ordinances from requiring repairs, modifications or system replacements unless a system is found to be failing. System problems that do not rise to the level of a “system failure” cannot be required to be remedied under an ordinance. The septic tank owner will have the option to repair or modify a system with problems but not “failing” as defined by this CS.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.

There are 18 counties with first magnitude springs within their boundaries that must adopt the evaluation procedures set forth in this CS. The CS requires them to expend funds to establish and administer evaluation programs and gives them authority to charge up to \$30 per evaluation. If the up to \$30 fee is not sufficient to cover these counties’ costs, and the shortfall exceeds \$1.88 million, counties will not be bound by the CS unless the Legislature finds the law fulfills an important state interest and passes it with a two-thirds vote of the membership of both chambers. The bill does not contain a finding of an important state interest.

¹⁷ See *supra* note 13.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS allows a county or municipality by ordinance to assess a fee up to \$30 to cover the costs of administering the evaluation program. The CS also requires an evaluation report fee of not less than \$10 or more than \$15.

The CS reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems subject to the evaluation program will have to pay to have their systems evaluated every five years, which would include an evaluation report fee of up to \$15 and a fee of up to \$30 imposed by the county or municipality in addition to the charges assessed by the qualified contractor. The owners will also be responsible for the cost of required repairs, modifications or replacements of the system if it is found to be “failing.”

C. Government Sector Impact:

The cost to counties or municipalities adopting an evaluation program is indeterminate as it depends on program requirements adopted by each county or municipality. The DOH will also incur an indeterminate amount of costs associated with implementing the grant program. Counties with first magnitude springs will be required to expend funds to implement the provisions of this CS.

VI. Technical Deficiencies:

The CS leaves intact the grant program and evaluation report fee to be implemented and assessed by the DOH. However, the remainder of the CS takes away the DOH’s oversight and enforcement of an evaluation program and gives it to local governments. The CS also provides for a fee to be imposed by the county or municipality to pay for the cost of implementing the evaluation program. Therefore, it may be more consistent to establish the grant program within individual counties and municipalities that adopt an evaluation program. It may also be appropriate to authorize local governments to collect the evaluation report fee, instead of the DOH.

The CS requires the Surgeon General, in consultation with the Revenue Estimating Conference, to submit a revenue neutral fee schedule for implementation of the evaluation program created in this CS. The report was due on January 1, 2011 for a program created in this CS. The date should likely be January 1, 2012.

VII. Related Issues:

Counties with first magnitude springs within their boundaries are prohibited from opting out of the provisions of this CS. Those counties are Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Taylor, Volusia and Wakulla. However, municipalities having first magnitude springs within their boundaries may opt out.

In addition, spring recharge areas for first magnitude springs can and do exist in multiple jurisdictions. Therefore, some counties will be required to implement and administer an evaluation program while their neighboring counties, which also impact their springs, can opt out.

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 March 30, 2011:

The CS makes the following changes:

- Reinstates the ban on the land spreading of septage after January 1, 2016;
- Requires repairs, modifications and system replacements to meet current codes;
- Exempts systems that require operation permits or annual inspections from the evaluation program provisions;
- Prohibits counties with first magnitude springs within their boundaries from opting out of the evaluation program provisions;
- Changes the DEP's role in aiding the local government application process for funding from providing "direct technical assistance" to "guidance"; and
- Removes a provision that required the DEP to provide advice and technical assistance to local governments on how to provide low-interest loans for repairs to residents with failing systems.

CS by Health Regulation on March 29, 2011:

The CS differs from the bill in that it:

- Replaces the pilot program for the periodic evaluation of onsite sewage treatment and disposal systems with local onsite sewage treatment and disposal system evaluation and assessment programs that are to be adopted by a county or municipality by ordinance, unless the county or municipality opts out of the program by a certain date by adopting a resolution.
- Provides certain requirements of an evaluation program to be implemented by a county or municipality.

- Defines “bedroom” for clarification purposes because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms.
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee not less than \$50 to a fee of not less than \$15 and from a fee not more than \$150 to a fee of not more than \$30.

B. Amendments:

None.



370128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 338 - 355.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete line 65

and insert:

Section 1. Subsections (1), (5), and (6) of section

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

And the title is amended as follows:



370128

13 Delete lines 21 - 26
14 and insert:
15 evaluated at least once every 5 years; creating s.
16 381.00651, F.S.; requiring a



602374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Detert) recommended the following:

Senate Amendment

Delete lines 425 - 427
and insert:
requirements of the code in effect at the time the system's
remedial measures are permitted and installed.



191566

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete line 428
and insert:

(d) Exemptions.—The local ordinance shall exempt from the



893952

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Jones) recommended the following:

Senate Amendment (with title amendment)

Between lines 528 and 529
insert:

(f) Counties required to participate.-Any county identified
as having an impaired water body in accordance with s.
403.067(4) or a first magnitude spring within its boundaries is
prohibited from opting out of this section.

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

And the title is amended as follows:

Delete line 54



893952

13 and insert:
14 from a county or municipality; prohibiting a county
15 having certain impaired water bodies or a first
16 magnitude spring from opting out of the provisions of
17 the act; amending s. 381.00656,



394106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Latvala) recommended the following:

Senate Amendment to Amendment (893952)

Delete lines 6 - 7
and insert:
as having a first magnitude spring within its boundaries is



963910

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 544 - 545
and insert:
the Department of Environmental Protection shall provide
guidance in the application process to receive

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

And the title is amended as follows:

Delete lines 52 - 53
and insert:
department to provide certain guidance, within



963910

13

existing resources, upon request



767714

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete lines 551 - 554
and insert:
revolving loan program or how to model a revolving loan program
after the low-interest loan program of the Clean Water State
Revolving Fund. This subsection

By the Committee on Health Regulation; and Senator Dean

588-03213-11

20111698c1

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.0065, F.S.; deleting
4 legislative intent; defining the term "bedroom";
5 providing for any permit issued and approved by the
6 Department of Health for the installation,
7 modification, or repair of an onsite sewage treatment
8 and disposal system to transfer with the title of the
9 property; providing circumstances in which an onsite
10 sewage treatment and disposal system is not considered
11 abandoned; providing for the validity of an onsite
12 sewage treatment and disposal system permit if rules
13 change before final approval of the constructed
14 system; providing that a system modification,
15 replacement, or upgrade is not required unless a
16 bedroom is added to a single-family home; deleting
17 provisions requiring the Department of Health to
18 administer an evaluation and assessment program of
19 onsite sewage treatment and disposal systems and
20 requiring property owners to have such systems
21 evaluated at least once every 5 years; deleting
22 provisions prohibiting the land application of septage
23 and requiring the Department of Environmental
24 Protection to recommend to the Governor and
25 Legislature alternative methods for land application
26 of septage; creating s. 381.00651, F.S.; requiring a
27 county or municipality to adopt under certain
28 circumstances a local ordinance creating a program for
29 the periodic evaluation and assessment of onsite

588-03213-11

20111698c1

30 sewage treatment and disposal systems; requiring the
31 county or municipality to notify the Secretary of
32 State of the ordinance; authorizing a county or
33 municipality, in specified circumstances, to opt out
34 of certain requirements by a specified date;
35 authorizing a county or municipality to adopt or
36 repeal, after a specified date, an ordinance creating
37 an evaluation and assessment program; providing
38 criteria for evaluations, qualified contractors,
39 repair of systems, exemptions, notifications, fees,
40 and penalties; requiring that certain procedures be
41 used for conducting tank and drainfield evaluations;
42 providing for certain procedures in special
43 circumstances; providing for assessment procedures;
44 requiring the county or municipality to develop a
45 system for tracking the evaluations; providing
46 criteria; requiring counties and municipalities to
47 notify the Secretary of Environmental Protection that
48 an evaluation program ordinance is adopted; requiring
49 the department to notify those counties or
50 municipalities of the use of, and access to, certain
51 state and federal program funds; requiring the
52 department to provide certain advice and technical
53 assistance, within existing resources, upon request
54 from a county or municipality; amending s. 381.00656,
55 F.S.; extending the date by which the Department of
56 Health is required to begin administering the grant
57 program for the repair of onsite sewage treatment
58 disposal systems; adding a cross-reference; amending

588-03213-11

20111698c1

59 s. 381.0066, F.S.; conforming a cross-reference;
60 lowering the fees imposed by the department for
61 evaluation reports; providing an effective date.
62

63 Be It Enacted by the Legislature of the State of Florida:
64

65 Section 1. Subsections (1), (5), (6), and (7) of section
66 381.0065, Florida Statutes, as amended by chapter 2010-283, Laws
67 of Florida, are amended, present paragraphs (b) through (p) of
68 subsection (2) of that section are redesignated as paragraphs
69 (c) through (q), respectively, a new paragraph (b) is added to
70 that subsection, and paragraphs (w), (x), (y), and (z) are added
71 to subsection (4) of that section, to read:

72 381.0065 Onsite sewage treatment and disposal systems;
73 regulation.—

74 (1) LEGISLATIVE INTENT.—

75 ~~(a) It is the intent of the Legislature that proper~~
76 ~~management of onsite sewage treatment and disposal systems is~~
77 ~~paramount to the health, safety, and welfare of the public. It~~
78 ~~is further the intent of the Legislature that the department~~
79 ~~shall administer an evaluation program to ensure the operational~~
80 ~~condition of the system and identify any failure with the~~
81 ~~system.~~

82 ~~(b)~~ It is the intent of the Legislature that where a
83 publicly owned or investor-owned sewerage system is not
84 available, the department shall issue permits for the
85 construction, installation, modification, abandonment, or repair
86 of onsite sewage treatment and disposal systems under conditions
87 as described in this section and rules adopted under this

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88 section. It is further the intent of the Legislature that the
89 installation and use of onsite sewage treatment and disposal
90 systems not adversely affect the public health or significantly
91 degrade the groundwater or surface water.

92 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
93 term:

94 (b) "Bedroom" means a room that can be used for sleeping
95 which, for site-built dwellings, has a minimum 70 square feet of
96 conditioned space, or, for manufactured homes constructed to HUD
97 standards, has a minimum square footage of 50 square feet of
98 floor area and is located along an exterior wall, has a closet
99 and a door or an entrance where a door could be reasonably
100 installed, and an emergency means of escape and rescue opening
101 to the outside. A room may not be considered a bedroom if it is
102 used to access another room, unless the room that is accessed is
103 a bathroom or closet and does not include a hallway, bathroom,
104 kitchen, living room, family room, dining room, den, breakfast
105 nook, pantry, laundry room, sunroom, recreation room,
106 media/video room, or exercise room. For the purpose of
107 determining system capacity, occupancy is calculated at a
108 maximum of two persons per bedroom.

109 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
110 construct, repair, modify, abandon, or operate an onsite sewage
111 treatment and disposal system without first obtaining a permit
112 approved by the department. The department may issue permits to
113 carry out this section, but shall not make the issuance of such
114 permits contingent upon prior approval by the Department of
115 Environmental Protection, except that the issuance of a permit
116 for work seaward of the coastal construction control line

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117 established under s. 161.053 shall be contingent upon receipt of
118 any required coastal construction control line permit from the
119 Department of Environmental Protection. A construction permit is
120 valid for 18 months from the issuance date and may be extended
121 by the department for one 90-day period under rules adopted by
122 the department. A repair permit is valid for 90 days from the
123 date of issuance. An operating permit must be obtained prior to
124 the use of any aerobic treatment unit or if the establishment
125 generates commercial waste. Buildings or establishments that use
126 an aerobic treatment unit or generate commercial waste shall be
127 inspected by the department at least annually to assure
128 compliance with the terms of the operating permit. The operating
129 permit for a commercial wastewater system is valid for 1 year
130 from the date of issuance and must be renewed annually. The
131 operating permit for an aerobic treatment unit is valid for 2
132 years from the date of issuance and must be renewed every 2
133 years. If all information pertaining to the siting, location,
134 and installation conditions or repair of an onsite sewage
135 treatment and disposal system remains the same, a construction
136 or repair permit for the onsite sewage treatment and disposal
137 system may be transferred to another person, if the transferee
138 files, within 60 days after the transfer of ownership, an
139 amended application providing all corrected information and
140 proof of ownership of the property. There is no fee associated
141 with the processing of this supplemental information. A person
142 may not contract to construct, modify, alter, repair, service,
143 abandon, or maintain any portion of an onsite sewage treatment
144 and disposal system without being registered under part III of
145 chapter 489. A property owner who personally performs

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146 construction, maintenance, or repairs to a system serving his or
147 her own owner-occupied single-family residence is exempt from
148 registration requirements for performing such construction,
149 maintenance, or repairs on that residence, but is subject to all
150 permitting requirements. A municipality or political subdivision
151 of the state may not issue a building or plumbing permit for any
152 building that requires the use of an onsite sewage treatment and
153 disposal system unless the owner or builder has received a
154 construction permit for such system from the department. A
155 building or structure may not be occupied and a municipality,
156 political subdivision, or any state or federal agency may not
157 authorize occupancy until the department approves the final
158 installation of the onsite sewage treatment and disposal system.
159 A municipality or political subdivision of the state may not
160 approve any change in occupancy or tenancy of a building that
161 uses an onsite sewage treatment and disposal system until the
162 department has reviewed the use of the system with the proposed
163 change, approved the change, and amended the operating permit.

164 (w) Any permit issued and approved by the department for
165 the installation, modification, or repair of an onsite sewage
166 treatment and disposal system shall transfer with the title to
167 the property. A title is not encumbered at the time of transfer
168 by new permit requirements by a governmental entity for an
169 onsite sewage treatment and disposal system which differ from
170 the permitting requirements in effect at the time the system was
171 permitted, modified, or repaired.

172 (x) An onsite sewage treatment and disposal system is not
173 considered abandoned if the properly functioning onsite sewage
174 treatment and disposal system is disconnected from a structure

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175 that was made unusable or destroyed following a disaster and the
176 system was not adversely affected by the disaster. The onsite
177 system may be reconnected to a rebuilt structure if:

178 1. The reconnection of the onsite sewage treatment and
179 disposal system is to the same type and approximate size of
180 rebuilt structure that existed prior to the disaster;

181 2. The onsite sewage treatment and disposal system is not a
182 sanitary nuisance; and

183 3. The onsite sewage treatment and disposal system has not
184 been altered without prior authorization.

185
186 An onsite sewage treatment and disposal system that serves a
187 property that is foreclosed upon is not an abandoned system.

188 (y) If an onsite sewage treatment and disposal system
189 permittee receives, relies upon, and undertakes construction of
190 a system based upon a validly issued construction permit under
191 rules applicable at the time of construction, but a change to a
192 rule occurs after the approval of the system for construction
193 but before the final approval of the system, the rules
194 applicable and in effect at the time of construction approval
195 apply at the time of final approval if fundamental site
196 conditions have not changed between the time of construction
197 approval and final approval.

198 (z) A modification, replacement, or upgrade of an onsite
199 sewage treatment and disposal system is not required for a
200 remodeling addition to a single-family home if a bedroom is not
201 added.

202 ~~(5) EVALUATION AND ASSESSMENT.—~~

203 ~~(a) Beginning July 1, 2011, the department shall administer~~

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204 ~~an onsite sewage treatment and disposal system evaluation~~
205 ~~program for the purpose of assessing the fundamental operational~~
206 ~~condition of systems and identifying any failures within the~~
207 ~~systems. The department shall adopt rules implementing the~~
208 ~~program standards, procedures, and requirements, including, but~~
209 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
210 ~~requirements for the pump-out of a system or repair of a failing~~
211 ~~system, enforcement procedures for failure of a system owner to~~
212 ~~obtain an evaluation of the system, and failure of a contractor~~
213 ~~to timely submit evaluation results to the department and the~~
214 ~~system owner. The department shall ensure statewide~~
215 ~~implementation of the evaluation and assessment program by~~
216 ~~January 1, 2016.~~

217 ~~(b) Owners of an onsite sewage treatment and disposal~~
218 ~~system, excluding a system that is required to obtain an~~
219 ~~operating permit, shall have the system evaluated at least once~~
220 ~~every 5 years to assess the fundamental operational condition of~~
221 ~~the system, and identify any failure within the system.~~

222 ~~(c) All evaluation procedures must be documented and~~
223 ~~nothing in this subsection limits the amount of detail an~~
224 ~~evaluator may provide at his or her professional discretion. The~~
225 ~~evaluation must include a tank and drainfield evaluation, a~~
226 ~~written assessment of the condition of the system, and, if~~
227 ~~necessary, a disclosure statement pursuant to the department's~~
228 ~~procedure.~~

229 ~~(d)1. Systems being evaluated that were installed prior to~~
230 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
231 ~~bottom of the drainfield to the wettest season water table~~
232 ~~elevation as defined by department rule. All drainfield repairs,~~

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233 ~~replacements or modifications to systems installed prior to~~
234 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
235 ~~the bottom of the drainfield to the wettest season water table~~
236 ~~elevation as defined by department rule.~~

237 ~~2. Systems being evaluated that were installed on or after~~
238 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
239 ~~the bottom of the drainfield to the wettest season water table~~
240 ~~elevation as defined by department rule. All drainfield repairs,~~
241 ~~replacements or modification to systems developed on or after~~
242 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
243 ~~the bottom of the drainfield to the wettest season water table~~
244 ~~elevation.~~

245 ~~(e) If documentation of a tank pump-out or a permitted new~~
246 ~~installation, repair, or modification of the system within the~~
247 ~~previous 5 years is provided, and states the capacity of the~~
248 ~~tank and indicates that the condition of the tank is not a~~
249 ~~sanitary or public health nuisance pursuant to department rule,~~
250 ~~a pump-out of the system is not required.~~

251 ~~(f) Owners are responsible for paying the cost of any~~
252 ~~required pump-out, repair, or replacement pursuant to department~~
253 ~~rule, and may not request partial evaluation or the omission of~~
254 ~~portions of the evaluation.~~

255 ~~(g) Each evaluation or pump-out required under this~~
256 ~~subsection must be performed by a septic tank contractor or~~
257 ~~master septic tank contractor registered under part III of~~
258 ~~chapter 489, a professional engineer with wastewater treatment~~
259 ~~system experience licensed pursuant to chapter 471, or an~~
260 ~~environmental health professional certified under chapter 381 in~~
261 ~~the area of onsite sewage treatment and disposal system~~

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262 evaluation.

263 ~~(h) The evaluation report fee collected pursuant to s.~~
264 ~~381.0066(2)(b) shall be remitted to the department by the~~
265 ~~evaluator at the time the report is submitted.~~

266 ~~(i) Prior to any evaluation deadline, the department must~~
267 ~~provide a minimum of 60 days' notice to owners that their~~
268 ~~systems must be evaluated by that deadline. The department may~~
269 ~~include a copy of any homeowner educational materials developed~~
270 ~~pursuant to this section which provides information on the~~
271 ~~proper maintenance of onsite sewage treatment and disposal~~
272 ~~systems.~~

273 (5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-

274 (a) Department personnel who have reason to believe
275 noncompliance exists, may at any reasonable time, enter the
276 premises permitted under ss. 381.0065-381.0066, or the business
277 premises of any septic tank contractor or master septic tank
278 contractor registered under part III of chapter 489, or any
279 premises that the department has reason to believe is being
280 operated or maintained not in compliance, to determine
281 compliance with the provisions of this section, part I of
282 chapter 386, or part III of chapter 489 or rules or standards
283 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
284 part III of chapter 489. As used in this paragraph, the term
285 "premises" does not include a residence or private building. To
286 gain entry to a residence or private building, the department
287 must obtain permission from the owner or occupant or secure an
288 inspection warrant from a court of competent jurisdiction.

289 (b)1. The department may issue citations that may contain
290 an order of correction or an order to pay a fine, or both, for

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291 violations of ss. 381.0065-381.0067, part I of chapter 386, or
292 part III of chapter 489 or the rules adopted by the department,
293 when a violation of these sections or rules is enforceable by an
294 administrative or civil remedy, or when a violation of these
295 sections or rules is a misdemeanor of the second degree. A
296 citation issued under ss. 381.0065-381.0067, part I of chapter
297 386, or part III of chapter 489 constitutes a notice of proposed
298 agency action.

299 2. A citation must be in writing and must describe the
300 particular nature of the violation, including specific reference
301 to the provisions of law or rule allegedly violated.

302 3. The fines imposed by a citation issued by the department
303 may not exceed \$500 for each violation. Each day the violation
304 exists constitutes a separate violation for which a citation may
305 be issued.

306 4. The department shall inform the recipient, by written
307 notice pursuant to ss. 120.569 and 120.57, of the right to an
308 administrative hearing to contest the citation within 21 days
309 after the date the citation is received. The citation must
310 contain a conspicuous statement that if the recipient fails to
311 pay the fine within the time allowed, or fails to appear to
312 contest the citation after having requested a hearing, the
313 recipient has waived the recipient's right to contest the
314 citation and must pay an amount up to the maximum fine.

315 5. The department may reduce or waive the fine imposed by
316 the citation. In determining whether to reduce or waive the
317 fine, the department must consider the gravity of the violation,
318 the person's attempts at correcting the violation, and the
319 person's history of previous violations including violations for

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320 which enforcement actions were taken under ss. 381.0065-
321 381.0067, part I of chapter 386, part III of chapter 489, or
322 other provisions of law or rule.

323 6. Any person who willfully refuses to sign and accept a
324 citation issued by the department commits a misdemeanor of the
325 second degree, punishable as provided in s. 775.082 or s.
326 775.083.

327 7. The department, pursuant to ss. 381.0065-381.0067, part
328 I of chapter 386, or part III of chapter 489, shall deposit any
329 fines it collects in the county health department trust fund for
330 use in providing services specified in those sections.

331 8. This section provides an alternative means of enforcing
332 ss. 381.0065-381.0067, part I of chapter 386, and part III of
333 chapter 489. This section does not prohibit the department from
334 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
335 III of chapter 489, or its rules, by any other means. However,
336 the department must elect to use only a single method of
337 enforcement for each violation.

338 ~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED. Effective~~
339 ~~January 1, 2016, the land application of septage from onsite~~
340 ~~sewage treatment and disposal systems is prohibited. By February~~
341 ~~1, 2011, the department, in consultation with the Department of~~
342 ~~Environmental Protection, shall provide a report to the~~
343 ~~Governor, the President of the Senate, and the Speaker of the~~
344 ~~House of Representatives, recommending alternative methods to~~
345 ~~establish enhanced treatment levels for the land application of~~
346 ~~septage from onsite sewage and disposal systems. The report~~
347 ~~shall include, but is not limited to, a schedule for the~~
348 ~~reduction in land application, appropriate treatment levels,~~

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349 ~~alternative methods for treatment and disposal, enhanced~~
350 ~~application site permitting requirements including any~~
351 ~~requirements for nutrient management plans, and the range of~~
352 ~~costs to local governments, affected businesses, and individuals~~
353 ~~for alternative treatment and disposal methods. The report shall~~
354 ~~also include any recommendations for legislation or rule~~
355 ~~authority needed to reduce land application of septage.~~

356 Section 2. Section 381.00651, Florida Statutes, is created
357 to read:

358 381.00651 Periodic evaluation and assessment of onsite
359 sewage treatment and disposal systems.—

360 (1) Effective January 1, 2012, any county or municipality
361 that does not opt out of this section shall develop and adopt by
362 ordinance a local onsite sewage treatment and disposal system
363 evaluation and assessment program within all or part of its
364 geographic area which meets the requirements of this subsection.
365 The county or municipality shall notify the Secretary of State
366 by letter of the adoption of such an ordinance pursuant to this
367 section. By a majority of the local elected body, a county or
368 municipality may opt out of the requirements of this section at
369 any time before January 1, 2012, by adopting a separate
370 resolution. The resolution shall be directed to and filed with
371 the Secretary of State and shall state the intent of the county
372 or municipality not to adopt an onsite sewage treatment and
373 disposal system evaluation and assessment program. A county or
374 municipality may subsequently adopt an ordinance imposing an
375 onsite sewage treatment and disposal system evaluation and
376 assessment program if the program meets the requirements of this
377 subsection. A county or municipality may repeal an ordinance

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378 adopted pursuant to this section if the county or municipality
379 notifies the Secretary of State by letter of the repeal. The
380 local ordinances may not deviate from or exceed the substantive
381 requirements of this subsection. Such adopted ordinance shall
382 provide for the following:

383 (a) *Evaluations.*—An evaluation of any septic tank within
384 all or part of the county's or municipality's jurisdiction must
385 take place once every 5 years to assess the fundamental
386 operational condition of the system and to identify system
387 failures. The ordinance may not mandate an evaluation at the
388 point of sale in a real estate transaction and may not require a
389 soil examination. The location of the system shall be
390 identified. A tank and drainfield evaluation and a written
391 assessment of the overall condition of the system pursuant to
392 the assessment procedure prescribed in paragraph (2) (d) are
393 required.

394 (b) *Qualified contractors.*—Each evaluation required under
395 this subsection must be performed by a septic tank contractor or
396 master septic tank contractor registered under part III of
397 chapter 489, a professional engineer having wastewater treatment
398 system experience and licensed pursuant to chapter 471, or an
399 environmental health professional certified under this chapter
400 in the area of onsite sewage treatment and disposal system
401 evaluation. Evaluations and pump outs may also be performed by
402 an authorized employee working under the supervision of the
403 individuals listed in this paragraph; however, all evaluation
404 forms must be signed by a qualified contractor.

405 (c) *Repair of systems.*—A local ordinance may not require a
406 repair, modification, or replacement of a system as a result of

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407 an evaluation unless the evaluation identifies a system failure.
408 For purposes of this subsection, the term "system failure" is
409 defined as a condition existing within an onsite sewage
410 treatment and disposal system which results in the discharge of
411 untreated or partially treated wastewater onto the ground
412 surface or into surface water, or which results in a sanitary
413 nuisance caused by the failure of building plumbing to discharge
414 properly. A system is not a failure if the system does not have
415 a minimum separation distance between the drainfield and the wet
416 season water table, or if an obstruction in a sanitary line or
417 an effluent screen or filter prevents effluent from flowing into
418 a drainfield. If a system failure is identified and several
419 remedial options are available to resolve the failure, the local
420 ordinance may not require more than the least costly remedial
421 measure to resolve the system failure. The homeowner may choose
422 the remedial measure to fix the system. There may be instances
423 in which a pump out is sufficient to resolve a system failure.
424 Remedial measures to resolve a system failure must meet the
425 requirements of the code in effect at the time the system was
426 originally permitted and installed, and are not required to meet
427 the current code requirements.

428 (d) Exemptions.—The local ordinance may exempt from the
429 evaluation requirements any system that is required to obtain an
430 operating permit or that is inspected by the department pursuant
431 to the annual permit inspection requirements of chapter 513.

432 (e) Notifications.—The local ordinance must require that
433 notice be given to the septic tank owner at least 60 days before
434 the septic tank is due for an evaluation. The notice may include
435 information on the proper maintenance of onsite sewage treatment

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436 and disposal systems.

437 (f) Fees.—The local ordinance may authorize the assessment
438 of a fee not to exceed \$30 paid by the owner of the septic tank
439 in order to cover the costs of administering the evaluation
440 program.

441 (g) Penalties.—The local ordinance must provide penalties
442 for qualified contractors and septic tank owners who do not
443 comply with requirements of the adopted ordinance.

444 (2) The following procedures shall be used for conducting
445 evaluations:

446 (a) Tank evaluation.—The tank evaluation shall assess the
447 apparent structural condition and water tightness of the tank
448 and shall estimate the size of the tank. The evaluation must
449 include a pump out. However, an ordinance may not require a pump
450 out if there is documentation that a tank pump out or a
451 permitted new installation, repair, or modification of the
452 system has occurred within the previous 5 years, and that
453 identifies the capacity of the tank and indicates that the
454 condition of the tank is structurally sound and watertight.
455 Visual inspection of the tank must be made when the tank is
456 empty to detect cracks, leaks, or other defects. Baffles or tees
457 must be checked to ensure that they are intact and secure. The
458 evaluation shall note the presence and condition of outlet
459 devices, effluent filters, and compartment walls; any structural
460 defect in the tank; and the condition and fit of the tank lid,
461 including manholes. If the tank, in the opinion of the qualified
462 contractor, is in danger of being damaged by leaving the tank
463 empty after inspection, the tank shall be refilled before
464 concluding the inspection.

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465 (b) Drainfield evaluation.—The drainfield evaluation must
466 include a determination of the approximate size and location of
467 the drainfield. The evaluation shall state the condition of
468 surface vegetation, including whether there is any seepage
469 visible or excessively lush vegetation; state whether there is
470 ponding water within the drainfield; and identify the location
471 of any downspout or drain that encroaches or drains into the
472 drainfield area. The evaluation must contain an overall
473 assessment of the drainfield.

474 (c) Special circumstances.—If the system contains pumps,
475 siphons, or alarms, the following information must be provided:

476 1. An assessment of dosing tank integrity, including the
477 approximate volume and the type of material used in
478 construction;

479 2. Whether the pump is elevated off of the bottom of the
480 chamber and its operational status;

481 3. Whether there are a check valve and purge hole; whether
482 there is a high-water alarm, including whether the type of alarm
483 is audio or visual or both, the location of the alarm, and its
484 operational condition; and whether electrical connections appear
485 satisfactory; and

486 4. Whether surface water can infiltrate into the tank and
487 whether the tank was pumped out.

488 (d) Assessment procedure.—All evaluation procedures used by
489 a qualified contractor shall be documented. The qualified
490 contractor shall provide a copy of a written, signed evaluation
491 report to the property owner, the county or municipality, and
492 the county health department. A copy of the evaluation report
493 shall be retained by the local county health department for a

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494 minimum of 5 years until a subsequent inspection report is
495 filed. The front cover of the report must identify any system
496 failure and include a clear and conspicuous notice to the owner
497 that the owner has a right to have any remediation of the
498 failure performed by a qualified contractor other than the
499 contractor performing the evaluation. The report must further
500 identify any crack, leak, improper fit or other defect in the
501 tank, manhole, or lid, and any other damaged or missing
502 component; any ponding of the drainfield or uneven distribution
503 of effluent and the extent of such effluent; any downspout or
504 other stormwater or source of water directed onto or toward the
505 system, including recommendations that such sources be
506 redirected away from the system; and any other maintenance need
507 or condition of the system at the time of the evaluation which,
508 in the opinion of the qualified contractor, would possibly
509 interfere with or restrict any future repair or modification to
510 the existing system. The report shall conclude with an overall
511 assessment of the fundamental operational condition of the
512 system.

513 (e) Tracking system.—A county or municipality that adopts
514 an evaluation program pursuant to this section shall develop,
515 accumulate, and assimilate its own database and establish a
516 computerized tracking system within its jurisdiction. Such
517 information shall be based upon information obtained from
518 written, signed evaluation reports given to property owners by
519 qualified contractors and filed with the county or municipality
520 and the county health department following an evaluation. The
521 information tracked must include:

522 1. The addresses or locations of the onsite systems;

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- 523 2. The number of onsite systems within the local
524 jurisdiction;
- 525 3. The total number and types of system failures; and
526 4. Any other trends deemed relevant by the county or
527 municipality resulting from an assessment of the overall
528 condition of systems.

529

530 The computerized tracking system may be Internet-based and shall
531 be used by the county or municipality to notify homeowners when
532 evaluations are due. Data and information shall be recorded and
533 updated as evaluations are conducted and reported to the county
534 or municipality and the county health department.

535 (3) A county or municipality that adopts an onsite sewage
536 treatment and disposal system evaluation and assessment program
537 pursuant to this section shall notify the Secretary of
538 Environmental Protection upon the adoption of an ordinance. The
539 Department of Environmental Protection shall, within existing
540 resources and upon receipt of such notice, notify the county or
541 municipality of the potential use of, and access to, program
542 funds under the Clean Water State Revolving Fund or s. 319 of
543 the Clean Water Act. Upon request by a county or municipality,
544 the Department of Environmental Protection shall provide direct
545 technical assistance in the application process to receive
546 moneys under the Clean Water State Revolving Fund or s. 319 of
547 the Clean Water Act. The Department of Environmental Protection
548 shall also, within existing resources and upon request by a
549 county or municipality, provide advice and technical assistance
550 to the county or municipality on how to establish a low-interest
551 revolving loan program, how to model a revolving loan program

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552 after the low-interest loan program of the Clean Water State
553 Revolving Fund, or how to provide low-interest loans to
554 residents for the repair of failing systems. This subsection
555 does not obligate the Department of Environmental Protection to
556 provide any money to fund such programs.

557 Section 3. Section 381.00656, Florida Statutes, is amended
558 to read:

559 381.00656 Grant program for repair of onsite sewage
560 treatment disposal systems.—Effective January 1, 2013 ~~2012~~, the
561 department shall administer a grant program to assist owners of
562 onsite sewage treatment and disposal systems identified pursuant
563 to s. 381.0065, s. 381.00651, or the rules adopted thereunder. A
564 grant under the program may be awarded to an owner only for the
565 purpose of inspecting, pumping, repairing, or replacing a system
566 serving a single-family residence occupied by an owner with a
567 family income of less than or equal to 133 percent of the
568 federal poverty level at the time of application. The department
569 may prioritize applications for an award of grant funds based
570 upon the severity of a system's failure, its relative
571 environmental impact, the income of the family, or any
572 combination thereof. The department shall adopt rules
573 establishing the grant application and award process, including
574 an application form. The department shall seek to make grants in
575 each fiscal year equal to the total amount of grant funds
576 available, with any excess funds used for grant awards in
577 subsequent fiscal years.

578 Section 4. Subsection (2) of section 381.0066, Florida
579 Statutes, is amended to read:

580 381.0066 Onsite sewage treatment and disposal systems;

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581 fees.—

582 (2) The minimum fees in the following fee schedule apply
583 until changed by rule by the department within the following
584 limits:

585 (a) Application review, permit issuance, or system
586 inspection, including repair of a subsurface, mound, filled, or
587 other alternative system or permitting of an abandoned system: a
588 fee of not less than \$25, or more than \$125.

589 (b) A 5-year evaluation report submitted pursuant to s.
590 381.00651 ~~381.0065(5)~~: a fee not less than \$10 ~~\$15~~, or more than
591 \$15 ~~\$30~~. At least ~~\$1 and no more than~~ \$5 collected pursuant to
592 this paragraph shall be used to fund a grant program established
593 under s. 381.00656.

594 (c) Site evaluation, site reevaluation, evaluation of a
595 system previously in use, or a per annum septage disposal site
596 evaluation: a fee of not less than \$40, or more than \$115.

597 (d) Biennial Operating permit for aerobic treatment units
598 or performance-based treatment systems: a fee of not more than
599 \$100.

600 (e) Annual operating permit for systems located in areas
601 zoned for industrial manufacturing or equivalent uses or where
602 the system is expected to receive wastewater which is not
603 domestic in nature: a fee of not less than \$150, or more than
604 \$300.

605 (f) Innovative technology: a fee not to exceed \$25,000.

606 (g) Septage disposal service, septage stabilization
607 facility, portable or temporary toilet service, tank
608 manufacturer inspection: a fee of not less than \$25, or more
609 than \$200, per year.

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610 (h) Application for variance: a fee of not less than \$150,
611 or more than \$300.

612 (i) Annual operating permit for waterless, incinerating, or
613 organic waste composting toilets: a fee of not less than \$15
614 ~~\$50~~, or more than \$30 ~~\$150~~.

615 (j) Aerobic treatment unit or performance-based treatment
616 system maintenance entity permit: a fee of not less than \$25, or
617 more than \$150, per year.

618 (k) Reinspection fee per visit for site inspection after
619 system construction approval or for noncompliant system
620 installation per site visit: a fee of not less than \$25, or more
621 than \$100.

622 (l) Research: An additional \$5 fee shall be added to each
623 new system construction permit issued to be used to fund onsite
624 sewage treatment and disposal system research, demonstration,
625 and training projects. Five dollars from any repair permit fee
626 collected under this section shall be used for funding the
627 hands-on training centers described in s. 381.0065(3)(j).

628 (m) Annual operating permit, including annual inspection
629 and any required sampling and laboratory analysis of effluent,
630 for an engineer-designed performance-based system: a fee of not
631 less than \$150, or more than \$300.

632

633 On or before January 1, 2011, the Surgeon General, after
634 consultation with the Revenue Estimating Conference, shall
635 determine a revenue neutral fee schedule for services provided
636 pursuant to s. 381.00651 ~~381.0065(5)~~ within the parameters set
637 in paragraph (b). Such determination is not subject to the
638 provisions of chapter 120. The funds collected pursuant to this

588-03213-11

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639 subsection must be deposited in a trust fund administered by the
640 department, to be used for the purposes stated in this section
641 and ss. 381.0065 and 381.00655.

642 Section 5. This act shall take effect upon becoming a law.

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 Environmental Preservation and Conservation Committee

BILL: CS/CS/SB 1290

INTRODUCER: Committee on Environmental Preservation and Conservation, Committee on Agriculture and Senator Dean

SUBJECT: Pest Control

DATE: March 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Spalla</u>	<u>AG</u>	<u>Fav/ CS</u>
2.	<u>Wiggins</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute for committee substitute (CS) revises the Florida Structural Pest Control Act. It authorizes the Department of Agriculture and Consumer Services (DACS) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The CS also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by DACS and establishes a licensing fee and biennial renewal fee.

The CS establishes a limited certification for a commercial wildlife management personnel category within DACS authorizing persons to use nonchemical methods for controlling rodents. The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

The CS increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992. And finally, the CS expands the methods

by which a pest control licensee may contact DACS regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

This CS amends sections 482.051, 482.071, and 482.226 of the Florida Statutes.

This CS creates sections 482.072 and 482.157 of the Florida Statutes.

II. Present Situation:

In 1947, the Legislature enacted a statute known as the Structural Pest Control Act of Florida. It was believed that the persons who were engaged in the Pest Control Industry required a certain amount of regulation for the health, welfare and protection of Florida citizens.¹ In 1959, the Legislature enacted a new Florida Structural Pest Control Act that repealed and superseded the act of 1947.² The practice of commercial pest control in Florida continues to be strictly regulated under the provisions of the Structural Pest Control Act, Chapter 482, F.S., and Rule Chapter 5E-14, Florida Administrative Code. These regulations are administered and enforced by DACS' Pest Control Section of the Bureau of Entomology and Pest Control.

Pest control includes one or more of the following activities:

- The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on or under a structure, lawn, or ornamental;
- The identification of or inspection for infestations or infections in, on or under a structure, lawn or ornamental;
- The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on or under a structure, lawn, or ornamental;
- All phases of structural fumigation (includes boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers); and
- The advertisement of, the solicitation of, or the acceptance of remuneration for any work, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.³

For structural pest control, the law provides that each pest control business location must be licensed by the DACS and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region.

¹ <http://www.apms.org/japm/vol06/v6p14.pdf>.

² <http://www.jstor.org/pss/3492520>.

³ <http://www.flaes.org/aes-ent/licenseandcert.html>.

Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business. Allowing a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner would allow licensees a more efficient means of providing service to customers while still protecting customers through specific requirements for licensure and accountability.

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing DACS with a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury: \$100,000 each person and \$300,000 each occurrence; and property damage: \$50,000 each occurrence and \$100,000 in the aggregate.⁴ These minimum requirements for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Rats and mice, the most common rodent pests in Florida, often enter homes, farm buildings, and warehouses in search of food and shelter. These rodents have adapted to live with man, who has carried them to every corner of the earth. Rats and mice consume or contaminate large quantities of food and damage structures, stored clothing, and documents. They also serve as reservoirs or vectors of numerous diseases, such as Rat-bite fever, Leptospirosis (Weil's Disease), Murine Typhus, Rickettsial pox, Plague, Trichinosis, Typhoid, Dysentery, Salmonellosis, *Hymenolepis* tapeworms, Lymphocytic choriomeningitis, and Hanta virus.

Another species in Florida that may enter a home or building is bats. The statutory definition of "rodents" includes bats, which are not members of the order Rodentia.⁵ According to the Florida Fish and Wildlife Conservation Commission (FWC), there are three species of endangered or threatened bats. The Florida bonneted bat, which is listed as threatened, may make a home in the barrel tiled roofs of South Florida. This is a rare occurrence but all bats whether listed as protected or not may not be intentionally killed or wounded. The FWC's nuisance wildlife rule does not allow the intentional taking of bats.⁶ If bats are discovered on a property, than the owner needs to contact the FWC to identify the bat. The only legal remedy for removing bats is utilizing an exclusion device. Exclusion devices allow the bats to fly out but not to return so the bats will find another home. Bat exclusion devices may not be utilized during the birthing/rearing season which occurs between August 15th and April 15th. The Florida Bat Conservancy or FWC can provide technical assistance to a homeowner on a safe and legal remedy to remove bat/bats from the premises. The penalty for killing or wounding listed species without a permit is a third degree felony.⁷

In most cases of rodent infestation, the pest animals can be controlled without having to resort to the use of poisons. If rodents do find their way indoors, small populations can be easily eliminated with various nontoxic methods. Rodenticides (rodent poisons) need only be used in

⁴ s. 482.071(4), F.S.

⁵ s. 482.021(24), F.S.

⁶ Rule 68A-9.010 F.A.C.

⁷ s. 379.411, F.S.

cases of large or inaccessible infestations. The trapping of rodent pests is often preferable to the use of poisons. Traps prevent rodents from dying in inaccessible places and causing an odor problem. There is no chance of an accidental poisoning or secondary poisoning of nontarget wildlife, pets, or children with the use of traps. Secondary poisoning of pets or wildlife can result from eating poisoned rodents. Traps can be used in situations where poisons are not allowed or recommended, such as in food handling establishments.⁸

Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical methods to control rodents. For several years, the Florida Fish and Wildlife Conservation Commission has issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in permitting being discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the DACS asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected. The CS clarifies that certificate holders who practice accepted pest control methods would be immune from liability for violating laws prohibiting cruelty to animals.

For clarity purposes, the CS includes the word “commensal” to describe rodent. According to Pest Management Professionals, “commensal” pets are species of wildlife which have adapted to and become partially dependent on the human-built environment for food, water, and sometimes shelter.⁹ Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the DACS an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

III. Effect of Proposed Changes:

Section 1 amends s. 482.051, F.S., to authorize a rule change. In the event of an emergency requiring fumigation, pest control operators may provide emergency notice of the fumigation location to the DACS by facsimile or other form of electronic means.

Section 2 amends s. 482.071, F.S., to increase the minimum insurance requirements for a pest control licensee from \$100,000 to \$250,000. This change reflects the current levels of insurance offered by liability insurers.

Section 3 creates s. 482.072, F.S., to allow the establishment, inspection and regulation of centralized pest control customer contact centers. This would allow licensed centers to solicit pest control business and to provide service to customers for one or more business locations. It provides for the biennial renewal of the license. It also establishes a licensure fee of at least \$600, but not more than \$1,000 and renewal fees of at least \$600, but not more than \$1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a \$250 fee. It

⁸ <http://edis.ifas.ufl.edu/mg218>.

⁹ IPM for Commensal Rodents-Curriculum for Bio-Integral Resource Center Pest Management Professionals, Global Environmental Options, March 2005, at <http://www.birc.org/Rodent%20Curriculum.pdf>.

authorizes the DACS to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of chapter 482, F.S., or any rule adopted hereunder.

Section 4 creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least \$150, but not to exceed \$300. This section also provides for recertification fees, classes, and late fees. The CS limits the scope of work permitted by certificate holders and clarifies that licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws. However, licensees and certificate holders are not exempt from the rules, orders or regulations of the FWC.

Section 5 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from \$50,000 to \$500,000. This change reflects the current levels of insurance offered by liability insurers.

Section 6 provides that this act shall take effect July 1, 2011.

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:

Refer to Private Sector and Government Sector Impacts.

B. Private Sector Impact:

Pest control businesses that choose to obtain the license for a customer service center would incur the fees established by the CS. Pest control businesses that do not currently have the proposed minimum insurance requirements will have to increase their insurance coverage and will incur additional costs. Most insurance available today already exceeds the 1992 limits.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur the fees associated with the limited certification.

C. Government Sector Impact:

	2011-12	2012-13	2013-14
REVENUES:			
<u>Customer Contact Center:</u>			
License*	6,000	0	6,000
<u>Limited Certification Wildlife:</u>			
Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	0	7,500	7,500
TOTAL	\$ 21,000	\$15,000	\$ 21,000

*Based on 10 licenses issued per year at \$600 each, renewing biennially.

**Based on 100 exams the first year, 50 the second and third years, at \$150 each.

***Based on 100 renewals at \$75 each.

	2011-12	2012-13	2013-14
EXPENDITURES:			
Inspections*	15,860	15,860	15,860
License Issuance**	1,097	499	1,595
TOTAL	\$16,957	\$16,359	\$17,455

*FY 09-10 unit cost per inspection, 20 inspections at \$793.

**FY 09-10 unit cost per license, 110 inspections at \$9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

DACS will adopt rules relating to the requirements and procedures for recordkeeping and monitoring pest control customer contact center operations. DACS has indicated that the workload and cost to implement the rules can be absorbed by the current staff and will not require any additional funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by the Environmental Preservation and Conservation Committee on March 30, 2011:

The CS/CS removes the option of using glue boards to control rodents. The CS/CS includes the word “commensal” to describe rodents. The CS/CS clarifies that the FWC’s rules related to the taking of nuisance wildlife must be followed and does not allow the intentional taking of bats.

CS by the Agriculture Committee on March 21, 2011:

This CS makes technical changes to the bill that does not make any substantive changes.



649592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete lines 138 - 142
and insert:

(1) The department shall establish a limited certificate
authorizing individual commercial wildlife trapper personnel to
use nonchemical methods, including traps, mechanical or
electronic devices, or exclusionary techniques to control
commensal rodents.

1
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346744

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Delete line 142
and insert:
control commensal rodents



710404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment

Between lines 176 and 177
insert:

(6) This chapter does not exempt a person from the rules,
regulations, or orders of the Fish and Wildlife Conservation
Commission.

By the Committee on Agriculture; and Senator Dean

575-02801-11

20111290c1

1 A bill to be entitled
2 An act relating to pest control; amending s. 482.051,
3 F.S.; providing rule changes that allow operators to
4 provide certain emergency notice to the Department of
5 Agriculture and Consumer Services by facsimile or
6 electronic means; amending s. 482.071, F.S.;
7 increasing the minimum bodily injury and property
8 damage insurance coverage required for pest control
9 businesses; creating s. 482.072, F.S.; providing for
10 licensure by the department of pest control customer
11 contact centers; providing application requirements;
12 providing for fees, licensure renewal, penalties,
13 licensure expiration, and transfer of licenses;
14 creating s. 482.157, F.S.; providing for the
15 certification of commercial wildlife trappers;
16 providing certification requirements, examination
17 requirements, and fees; limiting the scope of work
18 permitted by certificate holders; clarifying that
19 licensees and certificateholders who practice accepted
20 pest control methods are immune from liability for
21 violating laws prohibiting cruelty to animals;
22 amending s. 482.226, F.S.; increasing the minimum
23 financial responsibility requirements for licensees
24 that perform certain inspections; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (4) of section 482.051, Florida

575-02801-11

20111290c1

30 Statutes, is amended to read:

31 482.051 Rules.—The department has authority to adopt rules
32 pursuant to ss. 120.536(1) and 120.54 to implement the
33 provisions of this chapter. Prior to proposing the adoption of a
34 rule, the department shall counsel with members of the pest
35 control industry concerning the proposed rule. The department
36 shall adopt rules for the protection of the health, safety, and
37 welfare of pest control employees and the general public which
38 require:

39 (4) That a licensee, before performing general fumigation,
40 notify in writing the department inspector having jurisdiction
41 over the location where the fumigation is to be performed, which
42 notice must be received by the department inspector at least 24
43 hours in advance of the fumigation and must contain such
44 information as the department requires. However, in an authentic
45 and verifiable emergency, when 24 hours' advance notification is
46 not possible, advance telephone, facsimile, or any other form of
47 acceptable electronic communication ~~or telegraph~~ notice may be
48 given; but such notice must be immediately followed by written
49 confirmation providing the required information.

50 Section 2. Subsection (4) of section 482.071, Florida
51 Statutes, is amended to read:

52 482.071 Licenses.—

53 (4) A licensee may not operate a pest control business
54 without carrying the required insurance coverage. Each person
55 making application for a pest control business license or
56 renewal thereof must furnish to the department a certificate of
57 insurance that meets the requirements for minimum financial
58 responsibility for bodily injury and property damage consisting

575-02801-11

20111290c1

59 of:

60 (a) Bodily injury: \$250,000 ~~\$100,000~~ each person and
61 \$500,000 ~~\$300,000~~ each occurrence; and property damage: \$250,000
62 ~~\$50,000~~ each occurrence and \$500,000 ~~\$100,000~~ in the aggregate;
63 or

64 (b) Combined single-limit coverage: \$400,000 in the
65 aggregate.

66 Section 3. Section 482.072, Florida Statutes, is created to
67 read:

68 482.072 Pest control customer contact centers.-

69 (1) The department may issue a license to operate a
70 customer contact center from which to solicit pest control
71 business or provide services to customers for one or more
72 business locations licensed under s. 482.071. A person may not
73 operate a customer contact center for a pest control business
74 which is not licensed by the department.

75 (2) (a) Before operating a customer contact center, and
76 biennially thereafter, on or before a renewal date set by the
77 department, a pest control business must apply to the department
78 for a license or license renewal for each customer contact
79 center location it operates. An application must be submitted in
80 the format prescribed by the department.

81 (b) The department shall establish a licensure fee of at
82 least \$600, but not more than \$1,000, and a renewal fee of at
83 least \$600, but not more than \$1,000, for a customer contact
84 center license. However, until renewal fee rules are adopted,
85 the initial license and renewal fees are each \$600. The
86 department shall establish a grace period, not to exceed 30 days
87 after the renewal date, and shall assess a late fee of \$150, in

575-02801-11

20111290c1

88 addition to the renewal fee, for a license that is renewed after
89 the grace period.

90 (c) A license automatically expires if it is not renewed
91 within 60 days after the renewal date and may be reinstated only
92 upon reapplication and payment of the license renewal fee and
93 late fee.

94 (d) A license automatically expires if a licensee changes
95 its customer contact center business location. The department
96 shall issue a new license upon payment of a \$250 fee, which must
97 be renewed by the renewal date for the former location's
98 license. A new license that is not renewed within 60 days after
99 the renewal date of the license for the former business location
100 automatically expires.

101 (e) The department may not issue or renew a license to
102 operate a customer contact center unless the pest control
103 business licensees for whom it solicits business are owned in
104 common by a person or business entity recognized by this state.

105 (f) The department may deny a license or refuse to renew a
106 license if the applicant or licensee, or one or more of the
107 applicant's or licensee's directors, officers, owners, or
108 general partners, are or have been directors, officers, owners,
109 or general partners of a pest control business that meets the
110 conditions in s. 482.071(2)(g).

111 (g) Sections 482.091 and 482.152 do not apply to a person
112 who solicits pest control services or provides customer service
113 in a licensed customer contact center unless the person performs
114 the pest control work as defined in s. 482.021(22)(a)-(d),
115 executes a pest control contract, or accepts remuneration for
116 such work.

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20111290c1

117 (h) Section 482.071(2)(e) does not apply to a license
118 issued under this section.

119 (3)(a) The department shall adopt rules establishing
120 requirements and procedures for recordkeeping and monitoring
121 customer contact center operations to ensure compliance with
122 this chapter and rules adopted hereunder.

123 (b) Notwithstanding any other provision of this chapter:

124 1. A customer contact center licensee is subject to
125 disciplinary action under s. 482.161 for a violation of this
126 chapter or a rule adopted hereunder committed by a person who
127 solicits pest control services or provides customer service in a
128 customer contact center.

129 2. A pest control business licensee may be subject to
130 disciplinary action under s. 482.161 for a violation committed
131 by a person who solicits pest control services or provides
132 customer service in a customer contact center operated by the
133 licensee if the licensee participates in the violation.

134 Section 4. Section 482.157, Florida Statutes, is created to
135 read:

136 482.157 Limited certification for commercial wildlife
137 management personnel.-

138 (1) The department shall establish a limited certificate
139 authorizing individual commercial wildlife trapper personnel to
140 use nonchemical methods, including traps, glue boards,
141 mechanical or electronic devices, or exclusionary techniques to
142 control rodents.

143 (2) The department shall issue a limited certificate to an
144 applicant who:

145 (a) Submits an application and examination fee, set by

575-02801-11

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146 departmental rule, of not more than \$300 or less than \$150. The
147 department shall provide examination reference materials and
148 offer the examination at least quarterly or as necessary in each
149 county;

150 (b) Passes the departmental examination; and

151 (c) Provides proof, including a certificate of insurance,
152 showing that the applicant has met the minimum financial bodily
153 injury and property damage requirements in s. 482.071(4).

154 (3) An application for recertification must be made
155 annually and be accompanied by a recertification fee of not more
156 than \$150 or less than \$75, as established by rule. The
157 application also must be accompanied by proof of completion of
158 the required 4 classroom hours of acceptable continuing
159 education and the required proof of insurance. After a grace
160 period not exceeding 30 days after the recertification renewal
161 date, a late fee of \$50 shall be assessed in addition to the
162 renewal fee. A certificate automatically expires 180 days after
163 the recertification date if the renewal fee has not been paid.
164 After expiration, a new certificate shall be issued only upon
165 successful reexamination and payment of the examination and late
166 fees.

167 (4) Certification under this section does not authorize:

168 (a) The use of pesticides or chemical substances, other
169 than adhesive materials, to control rodents or other nuisance
170 wildlife in, on, or under structures;

171 (b) Operation of a pest control business; or

172 (c) Supervision of an uncertified person using nonchemical
173 methods to control rodents.

174 (5) Persons licensed under this chapter who practice

575-02801-11

20111290c1

175 accepted pest control methods are immune from liability under s.
176 828.12.

177 Section 5. Subsection (6) of section 482.226, Florida
178 Statutes, is amended to read:

179 482.226 Wood-destroying organism inspection report; notice
180 of inspection or treatment; financial responsibility.—

181 (6) Any licensee that performs wood-destroying organism
182 inspections in accordance with subsection (1) must meet minimum
183 financial responsibility in the form of errors and omissions
184 (professional liability) insurance coverage or bond in an amount
185 no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000
186 ~~\$25,000~~ per occurrence, or demonstrate that the licensee has
187 equity or net worth of no less than \$500,000 ~~\$100,000~~ as
188 determined by generally accepted accounting principles
189 substantiated by a certified public accountant's review or
190 certified audit. The licensee must show proof of meeting this
191 requirement at the time of license application or renewal
192 thereof.

193 Section 6. This act shall take effect July 1, 2011.



RICK SCOTT
GOVERNOR

RECEIVED
FEB 9 2011

2011 FEB -9 PM 3:

DEPARTMENT OF STATE
DIVISION OF ELECTRIC

February 8, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following reappointment under the provisions of Section 373.073, Florida Statutes:

Mr. George A. Roberts
1603 Bay Avenue
Panama City, Florida 32405

as a member of the Governing Board, Northwest Florida Water Management District, subject to confirmation by the Senate. This appointment is effective February 4, 2011, for a term ending March 1, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/jlw

2405

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Kurt S. Browning, Secretary of State,
do hereby certify that

George A. Roberts

is duly appointed a member of the

**Governing Board,
Northwest Florida
Water Management District**

for a term beginning on the
Fourth day of February, A.D., 2011,
until the First day of March, A.D., 2014
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the Eighteenth day of February, A.D., 2011.*



Secretary of State